UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cinergy Corp. )
Duke Energy Ohio, Inc. ) Docket No. EC08-____-000
Cinergy Power Investments, Inc. )
Generating Facility LLCs )

APPLICATION FOR AUTHORIZATION OF
DISPOSITION OF JURISDICTIONAL ASSETS
UNDER SECTION 203 OF THE FEDERAL POWER ACT

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April 23, 2008
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>DESCRIPTION OF THE APPLICANTS</td>
</tr>
<tr>
<td>A.</td>
<td>Cinergy Corp.</td>
</tr>
<tr>
<td>B.</td>
<td>Duke Energy Ohio, Inc.</td>
</tr>
<tr>
<td>C.</td>
<td>Cinergy Power Investments, Inc.</td>
</tr>
<tr>
<td>D.</td>
<td>Generating Facility LLCs</td>
</tr>
<tr>
<td>II.</td>
<td>THE TRANSACTION</td>
</tr>
<tr>
<td>A.</td>
<td>Description of the Transaction</td>
</tr>
<tr>
<td>B.</td>
<td>Jurisdictional Facilities That Will Be Transferred</td>
</tr>
<tr>
<td>C.</td>
<td>Potential Non-Material Variations To The Transaction</td>
</tr>
<tr>
<td>III.</td>
<td>THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST</td>
</tr>
<tr>
<td>A.</td>
<td>No Adverse Effect on Competition</td>
</tr>
<tr>
<td>B.</td>
<td>No Adverse Effect On Rates</td>
</tr>
<tr>
<td>C.</td>
<td>No Adverse Effect On Regulation</td>
</tr>
<tr>
<td>D.</td>
<td>No Improper Cross-Subsidization</td>
</tr>
<tr>
<td></td>
<td>1. Transfer of Facilities</td>
</tr>
<tr>
<td></td>
<td>2. New Issuance of Securities</td>
</tr>
<tr>
<td></td>
<td>3. New Pledge or Encumbrance</td>
</tr>
<tr>
<td></td>
<td>4. New Affiliate Contracts</td>
</tr>
<tr>
<td>IV.</td>
<td>REQUEST FOR CONFIRMATION THAT THE TRANSACTION IS NOT BARRED UNDER FPA § 305(a)</td>
</tr>
<tr>
<td>V.</td>
<td>INFORMATION REQUIRED BY PART 33 OF THE COMMISSION’S REGULATIONS</td>
</tr>
<tr>
<td>A.</td>
<td>Section 33.2(a): Names and addresses of the principal business offices of the applicants</td>
</tr>
<tr>
<td>B.</td>
<td>Section 33.2(b): Names and addresses of persons authorized to receive notices and communications in respect to the Application</td>
</tr>
<tr>
<td>C.</td>
<td>Section 33.2(c): Description of Applicants</td>
</tr>
<tr>
<td>D.</td>
<td>Section 33.2(d): Description of the jurisdictional facilities owned and operated or controlled by Applicants, their parents or affiliates</td>
</tr>
<tr>
<td>E.</td>
<td>Section 33.2(e): Narrative description of the Transaction</td>
</tr>
<tr>
<td>F.</td>
<td>Section 33.2(f): Contracts with respect to the Transaction</td>
</tr>
<tr>
<td>G.</td>
<td>Section 33.2(g): Facts relied upon to show that the Transaction is in the public interest</td>
</tr>
<tr>
<td>H.</td>
<td>Section 33.2(h): Physical property</td>
</tr>
<tr>
<td>I.</td>
<td>Section 33.2(i): Status of actions before other regulatory bodies</td>
</tr>
<tr>
<td>J.</td>
<td>Section 33.2(j): Cross-subsidization</td>
</tr>
<tr>
<td>K.</td>
<td>Section 33.5: Accounting Entries</td>
</tr>
<tr>
<td>L.</td>
<td>Verification</td>
</tr>
<tr>
<td>VI.</td>
<td>CONCLUSION</td>
</tr>
</tbody>
</table>
LIST OF ATTACHMENTS

ATTACHMENT 1 – PRO FORMA ACCOUNTING ENTRIES
ATTACHMENT 2 – VERIFICATION

LIST OF EXHIBITS

EXHIBIT A: BUSINESS ACTIVITIES OF APPLICANTS
EXHIBIT B: LIST OF ENERGY SUBSIDIARIES AND AFFILIATES
EXHIBIT C: ORGANIZATIONAL CHARTS DEPICTING CURRENT AND POST-TRANSACTION STRUCTURE
EXHIBIT D: DESCRIPTION OF ALL JOINT VENTURES, STRATEGIC ALLIANCES, TOLLING ARRANGEMENTS OR OTHER BUSINESS VENTURES
EXHIBIT E: COMMON OFFICERS OR DIRECTORS OF THE PARTIES TO THE TRANSACTION
EXHIBIT F: DESCRIPTION AND LOCATION OF WHOLESALE POWER SALES CUSTOMERS AND UNBUNDLED TRANSMISSION SERVICES CUSTOMERS SERVED BY APPLICANTS OR THEIR AFFILIATES
EXHIBIT G: DESCRIPTION OF JURISDICTIONAL FACILITIES OF APPLICANTS AND THEIR AFFILIATES
EXHIBIT H: JURISDICTIONAL FACILITIES AND SECURITIES ASSOCIATED WITH OR AFFECTED BY THE TRANSACTION
EXHIBIT I: CONTRACTS WITH RESPECT TO THE DISPOSITION OF FACILITIES
EXHIBIT J: FACTS RELIED UPON TO DEMONSTRATE CONSISTENCY WITH PUBLIC INTEREST
EXHIBIT K: MAPS
EXHIBIT L: STATUS OF REGULATORY ACTIONS AND ORDERS
EXHIBIT M: NO IMPROPER CROSS-SUBSIDIZATION
Pursuant to section 203 of the Federal Power Act ("FPA") and Part 33 of the Commission’s Regulations, Cinergy Corp. ("Cinergy"), Duke Energy Ohio, Inc. ("DEO"), Cinergy Power Investments, Inc. ("CPI"), and various as-yet unformed affiliates described below (collectively, the “Applicants”) hereby request that the Commission approve a transaction ("Transaction") in which DEO and CPI will be converted into LLCs and, after a series of steps as more fully described in section II, DEO’s generation facilities and appurtenant interconnection facilities will be owned by twenty-two as-yet unformed entities (the “Generating Facility LLCs”) that will be indirect subsidiaries of DEO’s parent, Cinergy. The proposed Transaction is consistent with the public interest and should be approved without a hearing.

No significant issues are raised by the Transaction under any of the four factors considered by the Commission. The Transaction is a corporate reorganization that will relocate generation within the Duke Energy Corporation ("Duke") corporate family, and so will not have any effect on concentrations of market power and raises no market power concerns. The Transaction will have no adverse effect on rates, because (i) DEO, the only transmission-owning applicant, has made a hold-harmless commitment for transmission and ancillary services customers, (ii) DEO also has made a hold-harmless commitment under its cost-based reserve
sharing agreement, and (iii) all other wholesale and retail power sales customers of entities involved in the Transaction are served at market-based rates and are not captive customers. The jurisdiction of the Commission will not be affected, because it will retain rate jurisdiction over wholesale sales from the Facilities, and state regulation will not be affected because no state’s jurisdiction over the Facilities will change. Finally, the Transaction raises no cross-subsidization or encumbrance issues, because DEO, the only franchised utility involved in the Transaction, has no captive retail or wholesale power sales customers, and has made a hold harmless commitment with respect to transmission and ancillary services customers, and with respect to customers under a reserve sharing agreement.

I. DESCRIPTION OF THE APPLICANTS

Applicants are all direct or indirect subsidiaries of Duke.\(^1\) Duke operates its businesses primarily through: (1) utility companies that generate, transmit, distribute and sell electricity at retail and wholesale in North Carolina, South Carolina, Indiana, Ohio and Kentucky, and sell gas to retail customers in the Greater Cincinnati area, in both Ohio and Kentucky; (2) international entities that develop, operate and manage power generation facilities, and that engage in sales and marketing of natural gas and electric power outside the United States and Canada; and (3) its Duke Energy Generation Services subsidiary, which engages in developing, owning or managing non-regulated energy projects.

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A. Cinergy Corp.

Cinergy is a direct wholly-owned subsidiary of Duke. It is the direct parent of DEO, as well as Duke Energy Indiana, Inc. (“DEI”). DEO is the direct parent of Duke Energy Kentucky, Inc. (“DEK”).

B. Duke Energy Ohio, Inc.

DEO, an Ohio corporation and wholly-owned direct subsidiary of Cinergy, is a combination electric and gas public utility company that provides service in the southwestern portion of Ohio. DEO generates, transmits, distributes and sells electricity at retail and wholesale, and distributes and sells natural gas at retail. DEO’s electric operations are subject to Ohio’s electric utility restructuring statute, which initiated retail electric competition in Ohio starting in 2001. DEO owns generating units at the following stations:

<table>
<thead>
<tr>
<th>Plant Name</th>
<th>Location</th>
<th>Percent Ownership</th>
<th>Principal Fuel Source</th>
<th>Gross Nameplate Capability Total(^2) MW</th>
<th>Gross Nameplate Capability Share(^3) MW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miami Fort Station (Units 7&amp;8)</td>
<td>North Bend, Ohio</td>
<td>64.00</td>
<td>Coal</td>
<td>1024</td>
<td>656</td>
</tr>
<tr>
<td>Miami Fort Combustion Turbine Station</td>
<td>North Bend, Ohio</td>
<td>100.00</td>
<td>Oil</td>
<td>66</td>
<td>66</td>
</tr>
<tr>
<td>W.C. Beckjord Station (Units 1-5)</td>
<td>New Richmond, Ohio</td>
<td>100.00</td>
<td>Coal</td>
<td>730</td>
<td>730</td>
</tr>
<tr>
<td>W.C. Beckjord Station (Unit 6)</td>
<td>New Richmond, Ohio</td>
<td>37.50</td>
<td>Coal</td>
<td>446</td>
<td>163</td>
</tr>
<tr>
<td>W.C. Beckjord Combustion Turbine Station</td>
<td>New Richmond, Ohio</td>
<td>100.00</td>
<td>Oil</td>
<td>212</td>
<td>212</td>
</tr>
<tr>
<td>J.M. Stuart Station</td>
<td>Aberdeen, Ohio</td>
<td>39.00</td>
<td>Coal</td>
<td>2239</td>
<td>873</td>
</tr>
</tbody>
</table>

\(^2\) The “total” MW for a facility includes the capability of shares of the facility owned by entities other than DEO.

\(^3\) This figure shows the capability of DEO’s share of a facility.
<table>
<thead>
<tr>
<th>Plant Name</th>
<th>Location</th>
<th>Percent Ownership</th>
<th>Principal Fuel Source</th>
<th>Gross Nameplate Capability</th>
<th>Total MWs</th>
<th>Gross Nameplate Capability Share MW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Killen Station</td>
<td>Adams County, Ohio</td>
<td>33.00</td>
<td>Coal</td>
<td>613</td>
<td>202</td>
<td></td>
</tr>
<tr>
<td>Conesville Station</td>
<td>Conesville, Ohio</td>
<td>40.00</td>
<td>Coal</td>
<td>787</td>
<td>315</td>
<td></td>
</tr>
<tr>
<td>William H. Zimmer Generating</td>
<td>Moscow, Ohio</td>
<td>46.50</td>
<td>Coal</td>
<td>1426</td>
<td>663</td>
<td></td>
</tr>
<tr>
<td>Washington Generating Station</td>
<td>Beverly, Ohio</td>
<td>100.0</td>
<td>Gas</td>
<td>620</td>
<td>620</td>
<td></td>
</tr>
<tr>
<td>Hanging Rock Generating Station</td>
<td>Ironton, Ohio</td>
<td>100.0</td>
<td>Gas</td>
<td>1240</td>
<td>1240</td>
<td></td>
</tr>
<tr>
<td>Fayette Generating Station</td>
<td>Masontown, PA</td>
<td>100.00</td>
<td>Gas</td>
<td>620</td>
<td>620</td>
<td></td>
</tr>
<tr>
<td>Lee Generating Station</td>
<td>Dixon, Illinois</td>
<td>100.0</td>
<td>Gas</td>
<td>640</td>
<td>640</td>
<td></td>
</tr>
<tr>
<td>Vermillion Generating Station</td>
<td>Cayuga, Indiana</td>
<td>75.0</td>
<td>Gas</td>
<td>640</td>
<td>480</td>
<td></td>
</tr>
<tr>
<td>Dicks Creek Station</td>
<td>Middletown, Ohio</td>
<td>100.00</td>
<td>Gas</td>
<td>159</td>
<td>159</td>
<td></td>
</tr>
<tr>
<td>Ohio Valley Electric Corporation</td>
<td>Cheshire, OH and Madison, IN</td>
<td>9.0</td>
<td>Coal</td>
<td>2256</td>
<td>203</td>
<td></td>
</tr>
<tr>
<td>Total MWs</td>
<td></td>
<td></td>
<td></td>
<td>13718</td>
<td>7842</td>
<td></td>
</tr>
</tbody>
</table>

These generating units, and appurtenant interconnection facilities, are the Facilities.

DEO acquired five of these Facilities as part of the merger between Duke and Cinergy, and also acquired at that time reactive power supply tariffs associated with each such facility (the “Unit-Specific Reactive Supply Tariffs”) as follows:

<table>
<thead>
<tr>
<th>UNIT-SPECIFIC REACTIVE SUPPLY TARIFF</th>
<th>ASSOCIATED DOCKET NUMBERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duke Energy Ohio, Inc. (Fayette), FERC Electric Tariff, First Revised Volume No. 2</td>
<td>ER03-794; ER06-950; ER07-188, et al.</td>
</tr>
<tr>
<td>Duke Energy Ohio, Inc. (Hanging Rock), FERC Electric Tariff, First Revised Volume No. 3</td>
<td>ER05-567; ER06-952; ER07-188, et al.</td>
</tr>
<tr>
<td>Duke Energy Ohio, Inc. (Washington), FERC Electric Tariff, First Revised Volume No. 4</td>
<td>ER05-623; ER06-951; ER07-188, et al.</td>
</tr>
<tr>
<td>Duke Energy Ohio, Inc. (Vermillion), FERC Electric Tariff, First Revised Volume No. 5</td>
<td>ER05-123; ER06-967; ER07-188, et al.</td>
</tr>
<tr>
<td>Duke Energy Ohio, Inc. (Lee), FERC Electric Tariff, First Revised Volume No. 6</td>
<td>ER04-641; ER06-968; ER07-188, et al.</td>
</tr>
</tbody>
</table>
The Commission previously granted DEO (then The Cincinnati Gas & Electric Company) authorization to transfer to CPI many of the same generating plants the Applicants now propose to transfer to the Generating Facility LLCs, i.e., the generating units that historically had been in DEO’s retail ratebase, but no longer are.\textsuperscript{4} That transaction was not consummated.

DEO has prior blanket authorization to sell power at market-based rates, including power sales to, and purchases from, “unregulated” affiliates.\textsuperscript{5} The Commission has determined that, because DEO has no captive wholesale or retail ratepayers, concerns over the potential for affiliate abuse are sufficiently mitigated to permit DEO to remove affiliate sales and Code of Conduct restrictions on its interactions with its unregulated affiliates.\textsuperscript{6}

DEO owns transmission facilities that are under the operational control of the Midwest Independent Transmission System Operator, Inc. (“MISO”). Transmission service is provided

\textsuperscript{4} Cinergy Servs., Inc., 98 FERC ¶ 61,306 (2002) (“Prior Transfer Approval”). Since that order, DEO has transferred its ownership interest in the East Bend Station, the Woodsdale Station and Unit 6 of the Miami Fort Station to its subsidiary, DEK, and acquired the Washington, Hanging Rock, Fayette, Lee and Vermillion generating stations.

\textsuperscript{5} DEO has a stand-alone market-based rate tariff initially approved in The Cincinnati Gas & Electric Co., Docket No. ER04-288-000 (delegated letter order issued January 28, 2004), with the most recent amendment approved in Brownsville Power I, LLC, Docket Nos. ER00-826-004, et al. (delegated letter order issued January 10, 2006). DEO also shares two joint market-based rate tariffs with its affiliate DEI. These tariffs were initially approved in The Cincinnati Gas & Electric Co., 77 FERC ¶ 61,172 (1996) (most recent amendment approved in Brownsville, supra), and The Cincinnati Gas & Electric Co., Docket Nos. ER01-1820-000 and ER01-1820-001 (delegated letter order issued June 12, 2001) (most recent amendment approved in Duke Power Co. LLC, Docket Nos. ER99-2774-012, et al. (delegated letter order issued July 6, 2006)).

over DEO’s transmission facilities by MISO pursuant to the MISO Transmission and Energy Markets Tariff (“MISO Tariff”).

C. **Cinergy Power Investments, Inc.**

CPI, an Ohio corporation, is a wholly-owned direct subsidiary of DEO. CPI currently owns no generating or transmission assets, and will not own any after the Transaction, though it will directly or indirectly own the Generating Facility LLCs. CPI is authorized to sell power at market-based rates, but does not have any current power sales. As noted above, CPI was authorized in the Prior Transfer Approval to acquire the generating units owned by DEO before the Duke/Cinergy merger, which are now proposed to be acquired by the Generating Facility LLCs along with the five generating facilities acquired by DEO in the Duke/Cinergy merger. After the Transaction, the Generating Facility LLCs will be wholly-owned direct or indirect subsidiaries of CPI, and CPI will be a wholly-owned direct subsidiary of Cinergy. CPI also requested and received exempt wholesale generator status.

D. **Generating Facility LLCs**

Applicants expect to transfer the Facilities to twenty-two different limited liability companies, as depicted in Exhibit C. The Generating Facility LLCs have not yet been formed, and the Applicants are still considering tax and other issues that may lead them to modify this structure slightly. However, the differences in the structures being contemplated would not be material to the Commission’s analysis, as discussed below. The currently contemplated end-result structure is as follows (the steps that will result in this structure are described in the next

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7 The CPI Tariff was initially accepted for filing in *Cinergy Servs., Inc.*, 98 FERC ¶ 61,306 (2002), and its most recent amendment was approved in *Duke Power Co., LLC*, Docket Nos. ER96-110-020, *et al.* (delegated letter order issued July 6, 2006).

section). For each current DEO generating station, there will be an LLC (the “Station Level Generating Facility LLCs”). Most such Station Level Generating Facility LLCs will own all of the generating units located at the generating station. However, as shown in Exhibit C, two Station Level Generating Facility LLCs – specifically, those created for the Miami Fort and Beckjord stations – will own (i) the common plant, property and equipment used by the station’s various generating units, and (ii) a series of LLCs that will each own one of the generating units at that generating station (the “Unit Level Generating Facility LLCs”).

II. THE TRANSACTION

A. Description of the Transaction

The Transaction consists of five steps, each of which would occur seriatim at closing. First, DEO and CPI will be converted to limited liability companies. Second, DEO will create the Station Level Generating Facility LLCs as direct wholly-owned subsidiaries, and the Miami Fort and Beckjord Station Level Generating Facility LLCs in turn will create Unit Level Generating Facility LLCs. Third, DEO will contribute its ownership interest in the Facilities and associated liabilities (and the Unit Specific Reactive Supply Tariffs) to the Station Level Generating Facility LLCs, and the Miami Fort and Beckjord Station Level Generating Facility LLCs in turn will contribute ownership interests in the units at the Miami Fort and Beckjord stations to the appropriate Unit Level Generating Facility LLCs. Fourth, DEO will contribute its interests in all of the Station Level Generating Facility LLCs, as well as debt associated with the Facilities (to the extent not already contributed to the Generating Facility LLCs), and some or all of DEO’s wholesale power sales contracts, to CPI. Finally, in the fifth step, DEO will distribute its ownership in CPI to DEO’s immediate parent, Cinergy.

Step three will be pursuant to the Asset Contribution Agreement, a form of which is included in Exhibit I. The contribution of debt from DEO to CPI in step four will be pursuant to
the Debt Assumption Agreement, which also is included in Exhibit I. All other steps of the Transaction will occur pursuant to Board resolutions. Charts depicting the pre- and post-Transaction corporate structure of the relevant entities are provided in Exhibit C.

B. Jurisdictional Facilities That Will Be Transferred

The only jurisdictional facilities that will be transferred are: (1) the Facilities, (2) the Unit Specific Reactive Supply Tariffs, which will be transferred to the Generating Facility LLCs that end up owning the associated generating facilities (as noted, each such tariff is specific to a particular generating facility), and (3) DEO’s wholesale power sales contracts. DEO’s portfolio of power sales contracts changes continuously, so DEO does not attempt here to separately identify each power sales contract that will be transferred on the closing date. However, all such power sales contracts were entered into pursuant to one of DEO’s market-based rate tariffs, and are the subject of DEO’s electric quarterly reports.\(^9\) Applicants note as well that in the final stage of the Transaction, when DEO distributes its interest in CPI to Cinergy, there will be an indirect change in control over CPI’s market-based rate tariff, and associated books and records. To the extent the Generating Facility LLCs have filed tariffs, those would be indirectly transferred as well.

C. Potential Non-Material Variations To The Transaction

The above description provides the currently expected form of the Transaction. However, several matters remain under consideration that may result in modifications to the Transaction. None of these variations would materially affect the criteria used by the

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\(^9\) We note that the Commission considers the market-based rate tariff and the EQRs, together, to satisfy the requirements for, among other things, identifying sales for purposes of meeting section 205 filing requirements, and submit that the same should be true under section 203.
Commission in analyzing the Transaction, and so we request that the Commission approve the Transaction whether in its currently contemplated form, or modified by one or more of these variations. The only variations contemplated – and the only variations for which we seek approval – are as follows:

**Structure.** The number of Generating Facility LLCs may change, as may the organization of such entities underneath Duke Energy. The process of determining the optimal corporate structure is an ongoing evaluation of factors, such as financial market conditions, that may change between now and the closing date. Thus, we request this flexibility to allow us to select, at or before closing, the corporate structure that is most advantageous from a financing and tax perspective. However, three important facts will not change: (1) all DEO jurisdictional facilities that are transferred will be transferred to Generating Facility LLCs, (2) all Generating Facility LLCs will be wholly-owned direct or indirect subsidiaries of Duke Energy, and (3) except to the extent expressly discussed elsewhere in this Application, no traditional utility affiliate of the Applicants will be involved in the Transaction. Thus, while the detail of the corporate structure may change, such changes will not raise market power issues (because no non-affiliates will be involved in the Transaction\(^\text{10}\)), and will not raise ratepayer, regulation, or cross-subsidy issues (because DEO will be the only traditional utility involved, and its involvement will be only as described here).

**Jurisdictional Facilities.** We may transfer *fewer* jurisdictional facilities than are identified above. In particular, we may not transfer DEO’s interest in the Ohio Valley Electric

\[^{10}\text{We note however, for avoidance of doubt, that there may be future direct or indirect dispositions of all or part of the jurisdictional facilities involved in this Transaction, either pursuant to blanket authorizations or pursuant to separately obtained Commission authorization.}\]
Corporation, and we may not transfer all of DEO’s wholesale power sales contracts. We will not, of course, transfer any additional jurisdictional facilities without express permission.

We commit to inform the Commission if any of these variations occur in our post-closing notice of consummation of the Transaction.

III. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

Under section 203(a) of the FPA, the Commission will approve jurisdictional transactions that are “consistent with the public interest.” The Commission examines four factors in analyzing whether a proposed transaction is consistent with the public interest: (i) its effect on competition; (ii) its effect on rates; (iii) its effect on regulation;\(^\text{11}\) and (iv) whether it will result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.\(^\text{12}\)

As demonstrated below, the Transaction satisfies all of these standards. As such, it is consistent with the public interest and should be approved. Applicants need not show that a

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transaction positively benefits the public interest, but rather simply that it is consistent with the public interest. 13

A. No Adverse Effect on Competition

The Commission’s market power analysis reviews the effect of a transaction on competition through an Appendix A analysis that defines the relevant products sold by the applicants, identifies the customers and potential suppliers in the geographic markets that are likely to be affected by the proposed transaction, and measures the concentration of potential suppliers in the relevant markets through the Herfindahl-Hirschman Index ("HHI"). That analysis treats a corporate family as a single entity, effectively attributing ownership of all generation within the corporate family to all entities within the corporate family. Thus, when generation changes hands within the corporate family, there is no change to the HHI measurement. Accordingly, the Commission has held that internal corporate reorganizations have no adverse effect on competition. 14 Because the Transaction is such an internal corporate

13 See, e.g., Texas-New Mexico Power Co., 105 FERC ¶ 61,028 at P 23 & n.14 (2003) (citing Pac. Power & Light Co. v. FPC, 111 F.2d 1014, 1016-17 (9th Cir. 1940)).

14 See, e.g., Calpine Power Servs. Co., 92 FERC ¶ 62,150 at 64,187-88 (2000); PP&L Res., Inc., 90 FERC ¶ 61,203 at 61,649 (2000); Allegheny Energy Supply Co., 89 FERC ¶ 62,063 at 64,105 (1999); see also Order No. 642 at 31,902. While the Commission has expressed “safety net” concerns in circumstances where a potentially troubled generator sells generating units to a franchised utility affiliate, those concerns arise only (if at all) when the sale is from an “unregulated” merchant generator to a regulated utility that can recover costs in ratebase. See Cinergy Servs., Inc., 102 FERC ¶ 61,128 at P 23 (2003) (explaining that the ability to move a merchant generation company’s generating assets into an affiliated franchised utility provides a “likelihood of recovery of capital investment through rate base treatment” which confers a competitive advantage to the affiliated merchant generation company), reh’g denied, 108 FERC ¶ 61,250 (2004); see also Ameren Energy Gen. Co., 108 FERC ¶ 61,081 at P 61 (2004) (“Potential non-affiliated generators that perceive that affiliated generators have a ‘safety net’ available to them may be discouraged from entering the market.”). That fact pattern is not presented here because the acquiring companies – the LLCs – are not franchised utilities.
reorganization, with no generation entering or leaving the Duke Energy corporate family, it will not have any adverse effect on competition.

**B. No Adverse Effect On Rates**

The Transaction will not have an adverse impact on rates. CPI has a market-based rate tariff for wholesale sales and no captive customers. DEO is the only other jurisdictional public utility participating in the Transaction.

DEO has no captive wholesale or retail power sales customers. Its wholesale power sales (other than sales under a reserve sharing agreement discussed below) are at market-based rates. Its retail customers are doubly protected in that they have retail choice and are served at market-based rates. Ohio is a retail open access state. The Commission has often held that “open seasons” permitting wholesale customers to choose alternative suppliers are sufficient to prevent ratepayer harm even when the wholesale customer is being served under cost-based rates.\(^{15}\) Similarly, when retail customers are free to choose alternative suppliers, and so are not captive, they cannot be harmed.\(^{16}\) That is especially true where, as here, the retail customer is not being served under traditional cost-of-service regulation. DEO’s retail rates for generation are market-based,\(^{17}\) and set pursuant to a competitive process that is unrelated to traditional cost of service

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\(^{15}\) *See, e.g., Jersey Cent. Power & Light Co.*, 87 FERC ¶ 61,014 at 61,039 (1999); *see also Merger Policy Statement* at 30,124 (an open season that allows a wholesale customer to switch suppliers is an effective ratepayer protection).


\(^{17}\) *See Ohio Rev. Code Ann.* § 4928.14(A).
regulation. This has been confirmed both by the Public Utilities Commission of Ohio ("PUCO") and the Ohio Supreme Court. Indeed, according to the Ohio Supreme Court, "[i]t is well settled that the generation component of electric service is not subject to [PUCO] regulation." Thus, the Transaction will not have any effect on rates for retail or wholesale power sales.

The Transaction also will not have any impact on transmission rates. DEO is not transferring any transmission facilities that are part of the bulk transmission system or included in transmission ratebase (the only "transmission" facilities being transferred are limited appurtenant interconnection facilities). DEO has turned over operational control of its transmission facilities to MISO. Rates for use of transmission facilities owned by DEO are set forth in the MISO Tariff, as are rates for ancillary services, except for four ancillary services provided under a joint DEO, DEI and DEK tariff. DEO also provides contingency reserves, in

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18 In re Application of Columbus Southern Power Co. and Ohio Power Co. for Approval of a Post-Market Development Period Rate Stabilization Plan, Case No. 04-169-EL-UNC, 2005 Ohio PUC LEXIS 32, at *44-45 (Jan. 26, 2005) (citing Ohio Rev. Code Ann. § 4928.05) ("generation rates are subject to the market[,] not the [PUCO’s] traditional cost-of-service rate regulation.").


21 On September 18, 2007, Duke Energy Shared Services, Inc. ("DESS") (formerly Cinergy Services, Inc.) on behalf of DEI, DEK, and DEO (collectively, the "Duke Midwest Companies") submitted to the Commission: (1) a notice of cancellation of the DESS Open Access Transmission Tariff ("OATT"); and (2) a proposed Ancillary Services Tariff. The OATT was no longer being used as MISO is the transmission provider. However, as the Duke Midwest Companies would continue to supply the ancillary services, it was necessary to file a stand-alone Ancillary Services Tariff. The proposed Ancillary Services
its role as a balancing authority, through a Contingency Reserve Sharing Group Agreement.\(^{22}\)

Such reserves are provided at cost-based rates. For a period of five years following the date of the Transaction, DEO commits to hold the following customers harmless from including in rates costs arising from the Transaction: (i) transmission customers under the MISO Tariff; (ii) customers under the DEO/DEI/DEK Ancillary Services Tariff, and (iii) customers under the Contingency Reserve Sharing Group Agreement.\(^{23}\)

C. No Adverse Effect On Regulation

The Commission requires applicants to evaluate the effect on regulation of a proposed transaction, both at the federal and state level.\(^{24}\) The Transaction will have no impact on federal Tariff terms and conditions, including rates, were unchanged from the corresponding sections of the cancelled OATT, which were accepted by the Commission in 1998. The ancillary services included under the proposed Ancillary Services Tariff are: Schedule 2 – Reactive Supply and Voltage Control; Schedule 3 – Regulation and Frequency Response; Schedule 5 – Operating Reserves – Spinning; and Schedule 6 – Operating Reserves – Supplemental (collectively, the “DEO/DEI/DEK Ancillary Services Tariff”). The provision of Schedules 3, 5 and 6 will be included in the MISO Ancillary Services Market (“ASM”) when it is implemented (currently scheduled for September 9, 2008), but Schedule 2 – Reactive Supply and Voltage Control, will continue to be supplied by the Duke Midwest Companies. Hoosier Energy Rural Electric Cooperative, Inc. protested the rates for Schedule 2 – Reactive Supply and Voltage Control. On November 15, 2007, the Commission accepted the proposed notice of OATT cancellation and the Ancillary Services Tariff, suspended them for a nominal period to become effective October 11, 2007, subject to refund, and established hearing and settlement judge procedures. *Duke Energy Shared Servs., Inc.*, 121 FERC ¶ 61,144 (2007). The Commission also instituted a section 206 investigation and established a refund effective date, and consolidated the proceedings. *Id.* Settlement proceedings are ongoing as of the date of this filing.

\(^{22}\) The Contingency Reserve Sharing Group Agreement was accepted for filing in *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,092 (2006).

\(^{23}\) No similar commitment is needed with respect to other power sales customers because, as explained above, no other power sales customers are captive customers. After ASM implementation this commitment will not apply to sales of ancillary services in the MISO-administered ancillary services market.

\(^{24}\) Order No. 642 at 31,914-15; *see also* 18 C.F.R. § 2.26(e).
regulation; the Commission’s jurisdiction over DEO and CPI will not change as a result of the proposed Transaction, and the Commission will have jurisdiction over wholesale sales from the Facilities when they are acquired by the Generating Facility LLCs. As a result, there will be no impact on the Commission’s jurisdiction.

There also will be no impact on state jurisdiction. The only entity involved in the Transaction that is subject to state regulation is DEO, which is subject to Ohio’s retail ratemaking jurisdiction.25 We note as well that recently enacted Ohio legislation, which may shortly be signed into law, provides in part that “[n]o electric distribution utility shall sell or transfer any generating asset it wholly or partly owns at any time without obtaining prior [PUCO] approval.”26 Transfer of the Facilities from DEO therefore will have no impact on the PUCO’s jurisdiction.

D. No Improper Cross-Subsidization

Under the amendments to section 203 implemented by the Energy Policy Act of 2005, the Commission “shall approve” a proposed transaction “if it finds that the proposed transaction . . . will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless . . . the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.”27

25 As noted in Exhibit L, the Indiana Utility Regulatory Commission (“IURC”) also will have jurisdiction over the transfer of the Vermillion facility. However, the IURC’s jurisdiction over that facility will be the same after the Transaction as before.

26 See Amended Substitute Senate Bill No. 221, 127th Ohio General Assembly, Regular Session 2007-2008, Section 4928.17(E).

In Order Nos. 669, 669-A and 669-B, the Commission identified a four-factor test that applicants must satisfy in order to address the concerns identified in section 203 regarding any possible cross-subsidization, pledge or encumbrance of utility assets associated with the proposed transaction. Under this test, the Commission examines whether a proposed transaction results, at the time of the transaction or in the future, in:

1. transfers of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company;

2. new issuances of securities by traditional utility associate companies with wholesale or retail customers served under cost-based regulation for the benefit of an associate company;

3. new pledges or encumbrances of assets of a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; and

4. new affiliate contracts between non-utility associate companies and traditional utility associate companies with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under FPA sections 205 and 206.28

As required by Order No. 669-A,29 the Applicants here provided a detailed showing regarding each of these factors and, as required by Order No. 669-B,30 this showing relates both to the time of the Transaction and in the future, and is based on facts and circumstances that are known to the Applicants or are reasonably foreseeable.

28 Order No. 669 at P 169; Order No. 669-A at P 144.

29 Order No. 669-A at P 144.

30 Order No. 669-B at P 49.
1. **Transfers of Facilities**

The Transaction is a corporate reorganization that, as described above, will result in transfer of the Facilities from DEO to the LLCs. Because Ohio is a retail open access state, meaning that DEO’s retail customers have choice of generation providers, DEO has no retail power sales customers served at cost-based rates. All of its wholesale power sales customers are served at market-based rates, other than under the Contingency Reserve Sharing Group Agreement, which is subject to the hold harmless commitment specified above. Its retail power sales customers are served at market-based rates that are not tied to ownership of generation and will not be affected by the sale of the Facilities, and retail customers are also protected by having the right to choose an alternative retail supplier.

DEO does have transmission customers served at cost-based rates under the MISO Tariff, but the costs of the Facilities do not form an input to those rates, other than rates for generation-based ancillary services. Rates for generation-based ancillary services are fixed rates that will not change as a result of the Transaction. In any event, DEO has made the “hold harmless” commitment set out above with respect to its cost-based FERC-jurisdictional rates, i.e., its Transmission, Ancillary Services, and Contingency Reserve Sharing rates. Other than DEO, no traditional utility is involved in the Transaction, and none will transfer any facilities in connection with the Transaction, now or in the future.

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31 MISO’s ASM proposal has been approved by the Commission and is due to take effect on September 9, 2008. *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008), reh’g pending; *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER07-1272-000, Notice of Change in Ancillary Services Markets Launch Date (filed Mar. 21, 2008). Once the market is established, DEO no longer will provide ancillary services on a cost-of-service basis, except for the generation-based ancillary service of reactive power supply. Should DEO or MISO seek to change rates for generation-based ancillary services, any such filing will be subject to Commission approval under FPA section 205.
2. **New Issuance of Securities**

DEO’s only issuance of “new” securities in connection with the Transaction would be to restructure some existing debt associated with the generating assets that is not currently assignable to allow that debt to be transferred with the assets. Specifically, DEO currently has outstanding pollution control or solid waste disposal bonds that originally were issued in connection with construction of “qualifying” portions of certain of the Facilities (as described above, the Facilities will be transferred to the Generating Facility LLCs). To the extent these currently outstanding securities are assignable by their terms, they will be transferred to CPI, the holding company for the LLCs, at the time of the Transaction. However, some are not assignable by their terms. DEO will seek to refinance and restructure such securities in order to allow for similar assignment of those securities. These would be the only new securities issued by a traditional utility in connection with the Transaction. The issuance of these securities will not result in cross-subsidization – to the contrary, the securities will be issued for the express purpose of making them assignable, and thereby allowing debt associated with the generating plants to “follow” the plants out of DEO.\(^{32}\)

Other than DEO, no traditional utility is involved in the Transaction, and none will issue any new securities in connection with the Transaction, now or in the future.

3. **New Pledge or Encumbrance**

DEO will not enter into any new pledges or encumbrances in connection with the Transaction at the time of the Transaction, and there are no plans to do so in the future. Although DEO may issue traditional utility first mortgage bonds in the future, any such new

\(^{32}\) We note as well that CPI will assume any liabilities that DEO may have with respect to environmental litigation associated with the Facilities.
secured debt would be issued only for purposes of financing utility operations and not in connection with the Transaction. Other than DEO, no traditional utility is involved in the Transaction, and none will enter into any new pledges or encumbrances associated with the Transaction, now or in the future.\footnote{As noted, CPI will acquire from DEO existing or refinanced debt associated with the Facilities, and this assigned debt may involve placing a new pledge or encumbrance upon some or all of CPI’s assets or those of its subsidiaries, the Generating Facility LLCs. CPI may determine to enter into secured financing arrangements in the future as part of its financing program; however, such financing would be in the normal course and not as part of the Transaction. In any event, CPI and the Generating Facility LLCs are not traditional utilities.}

The regulations also call for evidence of the outstanding pledges and encumbrances of utility assets. Applicants do not read this requirement to apply to affiliates not involved in the Transaction. However, out of an abundance of caution, Applicants have electronically attached, in zip files as part of Exhibit M, copies of the documents evidencing the material pledges and encumbrances of the utility assets of each of the traditional utilities in the Duke Energy family.

4. **New Affiliate Contracts**

DEO has not entered into any affiliate contracts in connection with the Transaction. Other than the Asset Contribution Agreements and the Debt Assumption Agreement, no affiliate contracts currently are contemplated in connection with the Transaction, except as described below. DEO plans to purchase power to serve its load from the market. If any power purchases are made from an affiliate, they will be pursuant to prior authorization granted by this Commission pursuant to FPA section 205.

It is important to note that the Commission already has determined that DEO’s customers are protected from any potential for affiliate abuse due to affiliate contracts, and has waived
restrictions on affiliate power sales as well as Code of Conduct restrictions on pricing of sales of non-power goods and services accordingly. Since the purpose of such restrictions is to prevent cross-subsidization by captive ratepayers, it follows that the removal of these restrictions rests on a determination that cross-subsidization from affiliate contracts is not a concern where, as remains the case here, retail ratepayers are protected by retail choice, and there are no wholesale requirements customers. None of the facts used to support these findings have changed, and nothing about this Transaction changes the analysis that ratepayers cannot be harmed by affiliate contracts.

As described above, DEO currently provides some MISO transmission customers with certain generation-based ancillary services. Once MISO’s ancillary services market commences (scheduled for September 9, 2008), MISO transmission customers will procure reserves from the market. Thus, DEO will no longer be responsible to provide such services. The Transaction may not close before ASM begins. However, if the Transaction does not close before commencement of MISO’s ancillary services market, and in any event with respect to reactive supply, DEO will procure such services in the bilateral market. All such arrangements will be pursuant to the seller’s Commission authorization under section 205 of the FPA, including any necessary authorizations for affiliate sales.

36 See discussion at note 21.
customers are further protected from cross-subsidization by DEO’s “hold harmless” commitment described above.\(^{37}\)

Other than the possible affiliate contracts discussed above, DEO does not contemplate entering into any other affiliate contracts related to the Transaction, either at the time of the Transaction or in the future. Other than DEO, no traditional utility is involved in the Transaction, and none will enter into any new affiliate contracts as a result of the Transaction.

Based on the above showing, the Transaction satisfies the Commission’s four-part test, and will not result in improper cross-subsidization.

**IV. REQUEST FOR CONFIRMATION THAT THE TRANSACTION IS NOT BARRED UNDER FPA § 305(a)**

As described above, in the final step of the Transaction, DEO will distribute up to its parent, Cinergy, its 100% ownership interest in CPI. In so doing, it will be distributing indirectly its interest in the generating plants owned by the Generating Facility LLCs, because those entities will be CPI direct or indirect subsidiaries.

We request that the Commission confirm our interpretation that FPA section 305(a) does not bar this aspect of the Transaction. Section 305(a) of the FPA provides in pertinent part that “[i]t shall be unlawful for any officer or director of any public utility . . . to participate in the making or paying of any dividends of such public utility from any funds properly included in

\(^{37}\) While it seems unlikely that the cross-subsidy rules had this type of agreement in mind, we note as well that DEO likely would participate, as transmission owner, in any generator interconnection agreements with the Generating Facility LLCs that will own generation attached to DEO’s system. However, as the operator of DEO’s transmission system, MISO is the principal party to any interconnection agreement, and any such agreement would be pursuant to the process established in MISO’s tariff, and would be overseen by MISO and filed with FERC, thereby eliminating any potential for affiliate abuse or cross-subsidization.
capital account.” The value of the ownership interest in CPI that DEO will distribute to Cinergy will be greater than DEO’s retained earnings. However, as in cases involving dividending of corporate interests in a restructuring context, this case is “less like a payment of dividends than it [is] a corporate restructuring with a one-time distribution of property,” and thus should be deemed permissible under section 305(a). The Commission has held that:

The concerns underlying the enactment of section 305(a) of the FPA included “that sources from which cash dividends were paid were not clearly identified and that holding companies had been paying out excessive dividends on the securities of their operating companies.” A central concern thus “was corporate officials raiding corporate coffers for their personal financial benefit.”

A transaction is permissible under section 305(a) where “none of these problems [that had been identified in the legislative history of Section 305(a) of the FPA] is evident.” This case involves an internal corporate restructuring with a one-time distribution of property. The Commission previously has found that cases involving spin-offs of utility assets to a newly formed affiliate, in which shareholders received a second set of stock for the spun-off company, are not barred by section 305(a). The restructuring proposed by Applicants will never reach the

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40 *Delmarva Power & Light Co.*, 91 FERC ¶ 61,043 at 61,158 (2000) (“Delmarva”) (quoting *Citizens*, 84 FERC at 61,865). See also *Niagara Mohawk Holdings, Inc.*, 95 FERC ¶ 61,381 at 62,416 (2001) (“Niagara Mohawk”) (“a primary concern underlying Section 305(a) of the FPA is to preclude exploitation of a utility by its directors [and] officers”).


42 See, *id.; ALLETE*, 107 FERC at PP 9-12. Other cases similarly recognize that corporate restructurings, or transparent one-time distributions of property or proceeds from the sale of property, do not involve the payment of dividends that are precluded by section 305(a) of the FPA. See, e.g., *Entergy La., Inc.*, 114 FERC ¶ 61,060 at P 12 (2006); *Exelon Corp.*, 109 FERC ¶ 61,172 at P 8 (2004)
shareholder level – Duke’s shareholders will continue to own the same stock, and the proposed Transaction “will have no adverse effect on the value of shareholders’ interests” because “[s]hareholders will have the same ownership interests after” the Transaction “as before.”43 Moreover, as in prior cases, the source of the distribution here is clearly identified. And as in prior cases, this is not a case of “excessive dividends” resulting from “corporate officials raiding corporate coffers for their personal financial benefit.”44 Thus, as in ALLETE and Citizens, the Transaction is corporate restructuring that is far removed from the sort of payment of cash dividends that are of concern under section 305(a).

Finally, we note that the Commission frequently requires, in cases involving section 305(a), that the applicant agree to maintain a minimum equity to total capital ratio of 30 percent as a condition of the Commission’s concluding that the proposed transaction does not raise the concerns underlying section 305(a).45 DEO not only makes this commitment, but additionally commits that the amount of debt it retains will be in the range that will accommodate preservation of DEO’s current credit ratings.

V. INFORMATION REQUIRED BY PART 33 OF THE COMMISSION’S REGULATIONS

Applicants submit the following information pursuant to Part 33 of the Commission’s regulations. As reflected in some of the Exhibits, Applicants request limited waiver of portions

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43 Citizens, 84 FERC at 61,865.

44 Delmarva, 91 FERC at 61,158.

45 See, e.g., Nat’l Grid, 117 FERC ¶ 61,080 at P 83 (2006) (requiring that the approved payment of dividends out of capital must cease if the equity of the public utilities subsidiaries, as a percentage of total capital, would fall below thirty percent), reh’g denied, 122 FERC ¶ 61,096 (2008); The Cincinnati Gas & Elec. Co., 115 FERC ¶ 61,250 at P 13 (2006) (requiring the affected public utilities to maintain a minimum equity balance equal to 30 percent of total capital) (citing Niagara Mohawk, 95 FERC at 62,416 (same)).
of these requirements to the extent they call for information not relevant to the Commission’s consideration of the Application.

A. **Section 33.2(a): Names and addresses of the principal business offices of the applicants.**

Cinergy Corp.
139 East 4th Street
Cincinnati, OH 45202

Duke Energy Ohio
139 East 4th Street
Cincinnati, OH 45202

Cinergy Power Investments, Inc.
139 East 4th Street
Cincinnati, OH 45202

B. **Section 33.2(b): Names and addresses of persons authorized to receive notices and communications in respect to the Application**

James B. Gainer
Vice President, Federal Regulatory Policy
Duke Energy Corporation
526 South Church Street
P.O. Box 1006
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Mike Naeve
Noel Symons*
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Washington, DC 20005
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nsymons@skadden.com

Jeffrey M. Trepel*
Associate General Counsel
Duke Energy Corporation
526 South Church Street
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Mail Code: EC03T
Charlotte, NC 28201
(704) 382-8131
jtrepel@duke-energy.com

Persons noted with an asterisk (*) are designated for service and should be included on the official service list in the proceeding.
C. **Section 33.2(c): Description of Applicants**

See Section I of this Application, and Exhibits A through F.

D. **Section 33.2(d): Description of the jurisdictional facilities owned and operated or controlled by Applicants, their parents or affiliates**

See Sections I, II and III of this Application.

E. **Section 33.2(e): Narrative description of the Transaction**

See Section II of this Application.

F. **Section 33.2(f): Contracts with respect to the Transaction**

See Exhibit I.

G. **Section 33.2(g): Facts relied upon to show that the Transaction is in the public interest**

See Section III of this Application.

H. **Section 33.2(h): Physical property**

See Exhibit K.

I. **Section 33.2(i): Status of actions before other regulatory bodies**

See Exhibit L.

J. **Section 33.2(j): Cross-subsidization**

See Section III.D of this Application and Exhibit M.

K. **Section 33.5: Accounting Entries**

Attachment 1 contains the *pro forma* accounting entries showing the proposed accounting for the Transaction for DEO, the only Applicant required to follow the Commission’s Uniform System of Accounts.

L. **Verification**

The verification required under section 33.7 of the Commission’s regulations, executed by an authorized representative of the Applicants, is provided at Attachment 2.
VI. CONCLUSION

As demonstrated above, as well as in the attached exhibits, the Transaction is consistent with the public interest under section 203 of the FPA, as defined by the Commission in its Merger Policy Statement, Part 33 regulations, and decisional precedent. The Applicants request that the Commission approve the Transaction, without a hearing.

Respectfully submitted,

/s/
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/s/
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Noel Symons
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Washington, DC 20005
(202) 371-7166
nsymons@skadden.com

April 23, 2008
DUKE ENERGY OHIO, INC. PRO FORMA ACCOUNTING ENTRIES

DEO is providing *pro forma* accounting entries as indicated below showing the proposed accounting for the Transaction on the books of DEO. The assets and liabilities of DEO that represent its generation fleet will be contributed to the Generating Facility LLCs, which in turn will be contributed to CPI, as described above in Section II.

CPI will market power on behalf of the Generating Facility LLCs, selling the output of the Facilities in the wholesale market. CPI also will purchase all the fuel and emission allowances for those generating stations. In addition, CPI will hold any debt associated with the non-regulated generation facilities and other common assets and liabilities, such as intangible assets and goodwill.

The proposed accounting entries reflect DEO’s best present assessment of the manner in which the Transaction ultimately will be recorded for accounting purposes. DEO will submit proposed final accounting within six months of the consummation of the Transaction showing all entries made on the books and records of DEO pursuant to the Commission’s Uniform System of Accounts, along with any appropriate narrative explanations describing the basis for the entries.
### Transfer of Duke Energy Ohio, Inc. Generating Assets and Related Liabilities to CPI and Generating Facilities LLCs
#### Pro Forma Accounting Entries
**As of March 31, 2008**

**Dollars in Thousands**

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<td></td>
<td>186</td>
<td>Miscellaneous Deferred Debits-Goodwill</td>
<td>1,188,219</td>
<td>1,188,219</td>
</tr>
<tr>
<td></td>
<td>186</td>
<td>Miscellaneous Deferred Debits-Other</td>
<td>193,440</td>
<td></td>
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<tr>
<td></td>
<td>190</td>
<td>Accumulated Deferred Income Taxes</td>
<td>93,476</td>
<td></td>
</tr>
<tr>
<td></td>
<td>208</td>
<td>Donations Received From Stockholders</td>
<td>1,480,095</td>
<td></td>
</tr>
<tr>
<td></td>
<td>211</td>
<td>Miscellaneous Paid-In Capital</td>
<td>2,971,550</td>
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<td></td>
<td>219</td>
<td>Accumulated Other Comprehensive Income</td>
<td>27,654</td>
<td></td>
</tr>
<tr>
<td></td>
<td>221</td>
<td>Bonds</td>
<td>226,800</td>
<td></td>
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<td></td>
<td>224</td>
<td>Other Long-Term Debt</td>
<td>234,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>225</td>
<td>Unamortized Premium on Long-Term Debt</td>
<td>7,196</td>
<td></td>
</tr>
<tr>
<td></td>
<td>226</td>
<td>Unamortized Discount on Long-Term Debt-Debit</td>
<td>746</td>
<td></td>
</tr>
<tr>
<td></td>
<td>228</td>
<td>Accum Provision for Pension and Benefits</td>
<td>18,702</td>
<td></td>
</tr>
<tr>
<td></td>
<td>230</td>
<td>Asset Retirement Obligations</td>
<td>5,831</td>
<td></td>
</tr>
<tr>
<td></td>
<td>232</td>
<td>Accounts Payable</td>
<td>131,340</td>
<td></td>
</tr>
<tr>
<td></td>
<td>233</td>
<td>Notes Payable To Associated Companies</td>
<td>66,944</td>
<td></td>
</tr>
<tr>
<td></td>
<td>234</td>
<td>Accounts Payable to Associated Companies</td>
<td>10,111</td>
<td></td>
</tr>
<tr>
<td></td>
<td>236</td>
<td>Taxes Accrued</td>
<td>28,120</td>
<td></td>
</tr>
<tr>
<td></td>
<td>237</td>
<td>Interest Accrued</td>
<td>9,400</td>
<td></td>
</tr>
<tr>
<td></td>
<td>241</td>
<td>Tax Collections Payable</td>
<td>162</td>
<td></td>
</tr>
<tr>
<td></td>
<td>242</td>
<td>Miscellaneous Current and Accrued Liabilities</td>
<td>15,077</td>
<td></td>
</tr>
<tr>
<td></td>
<td>244</td>
<td>Derivative Instrument Liabilities</td>
<td>64,877</td>
<td></td>
</tr>
<tr>
<td></td>
<td>245</td>
<td>Derivative Instrument Liabilities-Hedges</td>
<td>18,874</td>
<td></td>
</tr>
<tr>
<td></td>
<td>253</td>
<td>Other Deferred Credits</td>
<td>80,593</td>
<td></td>
</tr>
<tr>
<td></td>
<td>282</td>
<td>Accumulated Deferred Income Taxes-Oth Property</td>
<td>685,793</td>
<td></td>
</tr>
<tr>
<td></td>
<td>283</td>
<td>Accumulated Deferred Income Taxes-Other</td>
<td>14,188</td>
<td></td>
</tr>
</tbody>
</table>

To record transfer the generating assets and related liabilities from Duke Energy Ohio, Inc.
Attachment 2 – Verification
UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cinergy Corp. )
Duke Energy Ohio, Inc. )
Cinergy Power Investments, Inc. )
Generating Facility LLCs ) Docket No. EC08-____

VERIFICATION

State of Ohio )
) )
County of Hamilton )

I, Phillip C. Grigsby, being duly sworn, hereby attest: that I am Senior Vice President, Midwest Generation Portfolio, Duke Energy Ohio, Inc., and that I have the authority to verify the foregoing application. I have read the foregoing application and I affirm that the facts, representations and statements set forth therein with respect to Duke Energy Corporation and its subsidiaries are true and accurate to the best of my knowledge, information and belief.

[Signature]
Phillip C. Grigsby
Senior Vice President, Midwest Generation Portfolio
Duke Energy Ohio, Inc.

Subscribed and sworn to before me on this 14th day of April, 2008

[Signature]
Notary Public

My commission expires: _______________________

[Seal] ANITA M. SCHAFER
Notary Public, State of Ohio
My Commission Expires
November 4, 2009

STATE OF OHIO
Exhibit A: Business Activities of Applicants

The business activities of the Applicants are described in Section I of this Application.
Exhibit B: List of Energy Subsidiaries and Affiliates

A list of energy subsidiaries and affiliates for the Duke Energy family is attached.
## Exhibit B: Energy Affiliates

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Ownership Percentage</th>
<th>Primary Business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duke Energy Indiana, Inc.</td>
<td>100%</td>
<td>Duke Energy Indiana, Inc., formerly known as PSI Energy, Inc., is engaged in the production, transmission, distribution and sale of electricity in North Central, Central and Southern Indiana.</td>
</tr>
<tr>
<td>Duke Energy Kentucky, Inc.</td>
<td>100%</td>
<td>Duke Energy Kentucky, Inc., formerly known as The Union Light, Heat and Power Company, is engaged in the transmission, distribution and sale of electricity and the sale and transportation of natural gas in northern Kentucky.</td>
</tr>
<tr>
<td>Miami Power Corporation</td>
<td>100%</td>
<td>Miami Power Corporation owns an electric transmission line in Indiana.</td>
</tr>
<tr>
<td>KO Transmission Company</td>
<td>100%</td>
<td>KO Transmission Company is engaged in the transportation of natural gas in interstate commerce between Kentucky and Ohio.</td>
</tr>
<tr>
<td>Ohio Valley Electric Corporation</td>
<td>9%</td>
<td>Ohio Valley Electric Corporation owns an electric generating facility and sells electricity to a government facility. It also provides the large electric power requirement for a Department of Energy uranium enrichment complex.</td>
</tr>
<tr>
<td>Delta Township Utilities, LLC</td>
<td>51%</td>
<td>Delta Township Utilities, LLC constructs, owns, operates and maintains energy-related facilities for a General Motors metal stamping facility located in Delta Township, Michigan.</td>
</tr>
<tr>
<td>Environmental Wood Supply, LLC</td>
<td>50%</td>
<td>Environmental Wood Supply, LLC handles all fuel and fuel procurement-related costs for St. Paul Cogeneration LLC.</td>
</tr>
<tr>
<td>St. Paul Cogeneration LLC</td>
<td>50%</td>
<td>St. Paul Cogeneration LLC develops, constructs, operates and maintains a qualifying facility (QF) in downtown St. Paul, Minnesota.</td>
</tr>
<tr>
<td>Company Name</td>
<td>Ownership Percentage</td>
<td>Primary Business</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>----------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>DEGS of South Charleston, LLC</td>
<td>100%</td>
<td>Cinergy Solutions of South Charleston, LLC was formed to design, build, own, operate and maintain certain steam generating equipment and ancillary water treatment equipment to be located at the UCC Technical Center in South Charleston, West Virginia.</td>
</tr>
<tr>
<td>South Houston Green Power, L.P.</td>
<td>50%</td>
<td>South Houston Green Power, L.P. was formed for the purpose of selling steam and electricity to BP at its Texas City and Chocolate Bayou facilities. In addition, it will also operate and maintain existing facilities and construct, own, and operate new cogeneration facilities at the locations.</td>
</tr>
<tr>
<td>Oklahoma Arcadian Utilities, LLC</td>
<td>40.8%</td>
<td>Oklahoma Arcadian Utilities, LLC constructs, owns, operates and maintains energy-related facilities located at a General Motors vehicle assembly plant in Oklahoma City, Oklahoma.</td>
</tr>
<tr>
<td>Shreveport Red River Utilities, LLC</td>
<td>40.8%</td>
<td>Shreveport Red River Utilities, LLC constructs, owns, operates and maintains energy-related facilities located at a General Motors vehicle assembly plant in Shreveport, Louisiana.</td>
</tr>
<tr>
<td>Duke Energy Marketing America, LLC</td>
<td>100%</td>
<td>DEMA performed the energy marketing and energy management for the former unregulated merchant facilities of Duke Energy North America, LLC.</td>
</tr>
<tr>
<td>Duke Energy Trading and Marketing, L.L.C.</td>
<td>60%</td>
<td>DETM is a wholesale power marketer that also markets natural gas and other energy-related products in the United States. DETM does not own any generation or transmission.</td>
</tr>
<tr>
<td>Company Name</td>
<td>Ownership Percentage</td>
<td>Primary Business</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>----------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>DETM Marketing Northeast, LLC</td>
<td>60%</td>
<td>DMN provides technical energy supply and energy management services to customers in the northeastern United States.</td>
</tr>
<tr>
<td>Duke Energy Allowance Management, LLC</td>
<td>100%</td>
<td>Duke Allowance Management purchases and sells environmental credits in the U.S.</td>
</tr>
<tr>
<td>Duke Energy Merchants, LLC</td>
<td>100%</td>
<td>Duke Energy Merchants provides financial, risk management and asset management services to producers, transporters, and users of global energy commodities and derivative products such as crude oil, refined products, LPGs, residual fuels, coal, and fertilizer.</td>
</tr>
<tr>
<td>NuStart Energy Development, LLC</td>
<td>16.67%</td>
<td>NuStart has been awarded a contract from the Department of Energy to implement a plan to obtain NRC approval and issuance of a construction and operating license for an advanced nuclear power plant. In furtherance of its plan, NuStart will implement specific tasks supportive of deploying at least one advanced nuclear reactor design. These tasks will include a full range of engineering and technical tasks, analyses, and licensing activities.</td>
</tr>
<tr>
<td>APOG, LLC</td>
<td>25%</td>
<td>APOG provides technical, engineering, and procurement support services to and for the benefit of Member-owned or operated nuclear facilities.</td>
</tr>
<tr>
<td>Happy Jack Windpower, LLC</td>
<td>100%</td>
<td>Happy Jack Windpower owns all the assets that comprise the 29.4 MW Happy Jack Windpower Project being developed in Cheyenne, Wyoming.</td>
</tr>
<tr>
<td>Notrees Windpower, LP</td>
<td>100%</td>
<td>Notrees Windpower owns all the assets that comprise the Notrees Windpower Project being developed in Ector and Winkler Counties, Texas.</td>
</tr>
<tr>
<td>Company Name</td>
<td>Ownership Percentage</td>
<td>Primary Business</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>----------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Ocotillo Windpower, LP</td>
<td>100%</td>
<td>Ocotillo Windpower owns all the assets that comprise the 58.8 MW Ocotillo Windpower Project being developed near Big Spring, Texas.</td>
</tr>
<tr>
<td>Silver Sage Windpower, LLC</td>
<td>100%</td>
<td>Silver Sage Windpower holds a lease for some property in Laramie County, Wyoming.</td>
</tr>
<tr>
<td>Cinergy Capital &amp; Trading, Inc.</td>
<td>100%</td>
<td>Cinergy Capital &amp; Trading, Inc. is engaged in the business of marketing energy commodities at wholesale.</td>
</tr>
<tr>
<td>Cincap IV, LLC</td>
<td>10%</td>
<td>Markets electricity at wholesale.</td>
</tr>
<tr>
<td>CinCap V, LLC</td>
<td>10%</td>
<td>Markets electricity at wholesale.</td>
</tr>
<tr>
<td>Brownsville Power I, LLC</td>
<td>100%</td>
<td>A natural gas-fired generation facility located in Haywood County, Tennessee.</td>
</tr>
</tbody>
</table>
Organizational charts depicting current and post-Transaction corporate structures for the relevant entities, including the relevant “chain of command” to the ultimate parent, are attached. Applicants request partial waiver of this requirement to the extent it may contemplate showing the numerous additional companies within the Duke Energy family. All energy affiliates within the Duke Energy family are identified in Exhibit B.
Current Organizational Structure of Applicants
Showing Relevant Chain of Ownership

Duke Energy Corporation

Cinergy Corp.

Duke Energy Ohio, Inc.

Cinergy Power Investments, Inc.

Ohio Valley Electric Corporation

9%
Post-Transaction Organizational Structure of Applicants Showing Relevant Chain of Ownership

Duke Energy Corporation

Cinergy Corp.

Duke Energy Ohio, LLC

Cinergy Power Investments, LLC

Duke Energy Zimmer, LLC

Duke Energy Killen, LLC

Duke Energy Lee, LLC

Duke Energy Hanging Rock, LLC

Duke Energy Conesville, LLC

Duke Energy Miami Fort, LLC

Duke Energy Miami Fort Unit 7, LLC

Duke Energy Miami Fort Unit 8, LLC

Duke Energy Miami Fort Unit 9, LLC

Ohio Valley Electric Corporation

Duke Energy Miami Fort Unit 1, LLC

Duke Energy Miami Fort Unit 2, LLC

Duke Energy Miami Fort Unit 3, LLC

Duke Energy Miami Fort Unit 4, LLC

Duke Energy Miami Fort Unit 5, LLC

Duke Energy Miami Fort Unit 6, LLC

Duke Energy Beckjord, LLC

Duke Energy Beckjord Unit 1, LLC

Duke Energy Beckjord Unit 2, LLC

Duke Energy Beckjord Unit 3, LLC

Duke Energy Beckjord Unit 4, LLC

Duke Energy Beckjord Unit 5, LLC

Duke Energy Beckjord Unit 6, LLC

Duke Energy Beckjord CTs, LLC

Duke Energy Beckjord CTs, LLC

Duke Energy Dick's Creek, LLC

Duke Energy Washington, LLC

Duke Energy Fayette, LLC

Duke Energy Vermilion, LLC

Duke Energy Fayette, LLC

Duke Energy Washington, LLC

Duke Energy Beckjord, LLC
Exhibit D: Description of All Joint Ventures, Strategic Alliances, Tolling Arrangements or Other Business Ventures

A description of all joint ventures, strategic alliances, tolling arrangements and other business ventures of the Applicants is attached. The Applicants request a waiver of the requirement to provide this information for other Duke Energy subsidiaries as such information is not relevant to the Commission’s evaluation of this Application.

Joint Ventures. None.

Tolling Agreements. DEO has three physical tolling agreements. Two are with the Wabash Valley Power Authority. Both are for 50 megawatts at the Vermillion Station. One has a term of June 1, 2006 to December 31, 2013. The other has a term of June 1, 2007 through December 31, 2014. The third tolling agreement is with Southern Indiana Gas and Electric Company. It is for 100 megawatts at the Vermillion Station and has a term of January 1, 2007 to December 31, 2009.
Exhibit E: Common Officers or Directors of the Parties to the Transaction

Currently, the common officers and directors of the Applicants are as follows:

<table>
<thead>
<tr>
<th>Officer</th>
<th>Cinergy Corp. Title</th>
<th>Duke Energy Ohio, Inc. Title</th>
<th>Cinergy Power Investments, Inc. Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>David L. Hauser</td>
<td>Director, President</td>
<td>Director, Group Executive, Chief Financial Officer</td>
<td></td>
</tr>
<tr>
<td>James E. Rogers</td>
<td>Director</td>
<td>Director, Chief Executive Officer</td>
<td></td>
</tr>
<tr>
<td>James L. Turner</td>
<td>Director</td>
<td>Director, Group Executive, Chief Operating Officer</td>
<td></td>
</tr>
<tr>
<td>Lynn J. Good</td>
<td>Director</td>
<td></td>
<td>Director, Chief Executive Officer, President</td>
</tr>
<tr>
<td>Richard G. Beach</td>
<td>Assistant Secretary</td>
<td>Assistant Secretary</td>
<td></td>
</tr>
<tr>
<td>Keith G. Butler</td>
<td>Vice President - Tax</td>
<td>Senior Vice President, Tax</td>
<td></td>
</tr>
<tr>
<td>Stephen G. De May</td>
<td>Vice President, Treasurer</td>
<td>Vice President, Treasurer</td>
<td>Vice President, Treasurer</td>
</tr>
<tr>
<td>Julia S. Janson</td>
<td>Secretary</td>
<td>Senior Vice President, Corporate Secretary</td>
<td></td>
</tr>
<tr>
<td>Robert T. Lucas III</td>
<td>Assistant Secretary</td>
<td>Assistant Secretary</td>
<td></td>
</tr>
<tr>
<td>David S. Maltz</td>
<td>General Counsel, Assistant Secretary</td>
<td>Assistant Secretary</td>
<td></td>
</tr>
<tr>
<td>F. Wayne Wiesen</td>
<td></td>
<td>Senior Vice President, Legal; Assistant Secretary</td>
<td>Director, General Counsel, Vice President, Secretary</td>
</tr>
<tr>
<td>Steven K. Young</td>
<td>Chief Financial Officer, Controller</td>
<td>Senior Vice President, Controller</td>
<td></td>
</tr>
</tbody>
</table>

It is anticipated that, upon creation of the Generating Facility LLCs, these or other officers or directors of Duke companies will hold officer or director positions at the Generating Facility LLCs.
Exhibit F: Description and Location of Wholesale Power Sales Customers and Unbundled Transmission Services Customers Served by Applicants or their Affiliates

The names and locations of wholesale power sales customers served by Duke Energy Ohio are provided on the attached list. None of the other Applicants has any wholesale power sales customers. The Applicants request a waiver of the requirement to provide transmission services customers and information for their affiliates because such information is not relevant to the Commission’s evaluation of this Application.

<table>
<thead>
<tr>
<th>Central Iowa Power Cooperative</th>
<th>Citigroup Energy Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1400 HWY 13 SE</td>
<td>Director Derivatives Operations</td>
</tr>
<tr>
<td>Cedar Rapids, IA 52403</td>
<td>250 West Street</td>
</tr>
<tr>
<td>Manager, Generation Operations</td>
<td>10th Floor</td>
</tr>
<tr>
<td>Attn: Greg Gerdes</td>
<td>New York, NY 10013</td>
</tr>
<tr>
<td>319 366-6328 Fax</td>
<td></td>
</tr>
<tr>
<td>319 366-4512 Phone</td>
<td></td>
</tr>
</tbody>
</table>

| Citigroup Energy Inc.         | Consumers Energy Company |
| Operations Manager            | David F. Ronk           |
| 1301 Fannin, Suite 2300       | 1945 W. Parnall Road    |
| Houston, TX 77002             | Jackson, MI 49201       |

| East Kentucky Power Cooperative, Inc. | Fortis Energy Marketing & GP |
| 4775 Lexington Avenue            | 1100 Louisiana St         |
| Winchester, KY 40391             | Suite 4900                |
|                                  | Houston, TX 77002         |

| FPL Energy Power Marketing, Inc. | Hess Corporation |
| 700 Universe Blvd                | 1185 Avenue of the Americas |
| Juno Beach FL. 33408             | New York, NY 10036        |
|                                  |                         |

| Hoosier Energy Rural Electric Cooperative, Inc. | Kenergy Corp. |
| 7398 N. State Road 37                   | PO Box 18          |
| Bloomington, IN 47404                    | Henderson, KY 4241-0018 |

Exhibit F
DUKE ENERGY OHIO, INC.
TARIFF NOS. 2, 3, 4 & 6 LIST

New York Independent System Operator
10 Krey Boulevard
Rensselaer, NY 12144

PJM Interconnection, L.L.C.
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403-2497

Lehman Brothers Commodity Services, Inc. c/o Lehman Brothers Inc. Transaction Management Group Corporate Advisory Division 745 Seventh Ave New York, NY 10019

Duke Energy Indiana, Inc. (Mail) 139 East Fourth Street Mail Location EA600 (Overnight) 221 East Fourth Street Mail Location EA 600 (Mail and Overnight) Cincinnati, OH 45202

Powerex Corp #1400, 666 Burrard St Attn: Contract Management Vancouver, BC V6C2X8

Split Rock Energy LLC 301 4th Avenue South, Suite 860N Minneapolis, MN 55415

Southern Indiana Gas and Electric Company d/b/a Vectren Power Supply, Inc. Attn: Jami Young One Vectren Square Evansville, IN 47708

Texas Retail Energy, LLC Contract Administration – Bryan Lacina 2001 Southeast 10th Street Bentonville, AR 72716-0550

Tampa Electric Company Sr. Contracts Administrator, PL 7 702 North Franklin Street Tampa, FL 33602

Wabash Valley Power Association, Inc. Vicki Myers, Contract Administration 722 North High School Road Indianapolis, IN 46214-3756

Duke Energy Kentucky Inc. (Mail) 139 East Fourth Street Mail Location EA600 (Overnight) 221 East Fourth Street Mail Location EA 600 (Mail and Overnight) Cincinnati, OH 45202

Village of Bethel, Ohio 120 N. Main Street Bethel Ohio 45106-1014 Attn: Mike Shiverski

Village of Hamersville, Ohio PO Box 146 Hamersville, OH 45130 Attn: Mayor

Texas Retail Energy, LLC Sr. Contracts Administrator, PL 7 702 North Franklin Street Tampa, FL 33602
DUKE ENERGY OHIO, INC.
TARIFF NO. 5

PJM Interconnection, L.L.C.  Midwest Independent Transmission System Operator
955 Jefferson Avenue  701 City Center Drive
Valley Forge Corporate Center  Carmel, Indiana 46032
Norristown, PA 19403-2497

DUKE ENERGY SHARED SERVICES
obo DUKE ENERGY OHIO, INC. AND
DUKE ENERGY INDIANA, INC.
PJM FERC NO. 1

PJM Interconnection, L.L.C.
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403-2497

DUKE ENERGY SHARED SERVICES
obo DUKE ENERGY OHIO, INC. AND
DUKE ENERGY INDIANA, INC.
NY ISO FERC NO. 2

DUKE ENERGY OHIO, INC.
PJM RATE SCHEDULE NO. 63

PJM Interconnection, L.L.C.
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403-2497

DUKE ENERGY SHARED SERVICES
obo DUKE ENERGY OHIO, INC. AND
DUKE ENERGY INDIANA, INC.
RATE SCHEDULE FERC NO. 2

The Manitoba Hydro Electric Board
820 Taylor Ave
Winnipeg, Canada  R3m3T1
<table>
<thead>
<tr>
<th>Company</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>AES Power, Inc.</td>
<td>1001 North 19th Street</td>
</tr>
<tr>
<td></td>
<td>Arlington, VA 22209</td>
</tr>
<tr>
<td>Alcoa Power Generating Inc.</td>
<td>2300 Riverview Tower</td>
</tr>
<tr>
<td></td>
<td>900 S. Gay Street</td>
</tr>
<tr>
<td></td>
<td>Knoxville, TN 37902</td>
</tr>
<tr>
<td>Alliance Energy Services Partnership</td>
<td>9300 Shelbyville Road</td>
</tr>
<tr>
<td></td>
<td>Louisville, KY 40222</td>
</tr>
<tr>
<td>Alpena Power Company</td>
<td>310 North 2nd Avenue</td>
</tr>
<tr>
<td></td>
<td>P.O. Box 188</td>
</tr>
<tr>
<td></td>
<td>Alpena, MI 49707-0188</td>
</tr>
<tr>
<td>Aquila, Inc. d/b/a</td>
<td>Aquila Networks - MPS</td>
</tr>
<tr>
<td></td>
<td>10700 East 350 Highway</td>
</tr>
<tr>
<td></td>
<td>Kansas City, MO 64138</td>
</tr>
<tr>
<td>Aquila, Inc. d/b/a</td>
<td>Aquila Networks - WPK</td>
</tr>
<tr>
<td></td>
<td>10700 East 350 Highway</td>
</tr>
<tr>
<td></td>
<td>Kansas City, MO 64138</td>
</tr>
<tr>
<td>Arizona Public Service Company</td>
<td>P.O. Box 53999</td>
</tr>
<tr>
<td></td>
<td>Mail Drop 9860</td>
</tr>
<tr>
<td></td>
<td>Phoenix, AZ 85072-3999</td>
</tr>
<tr>
<td>Atlantic City Electric Company</td>
<td>Attn: Contract Administration</td>
</tr>
<tr>
<td></td>
<td>P.O. Box 6066</td>
</tr>
<tr>
<td></td>
<td>Newark, DE 19714-6066</td>
</tr>
</tbody>
</table>
Avista Energy, Inc.
470 Atlantic Avenue, 10th Floor
Boston, MA 02210

Bethel (Village of)
Bethel Board of Public Affairs
120 N. Main Street
Bethel, OH 45106

Blanchester (Village of)
P.O. Box 158
Blanchester, OH 45107-0158

Blue Ridge Power Agency
5656 U.S. Highway 29
Suite B-1
Blairs, VA 24527

Boston Edison Company
800 Boy Iston Street
Boston, MA 02199

BP Energy Company
501 Westlake Park Boulevard (WL1
LR4.300B)
Houston, TX 77079

Canadian Niagara Power Company, Limited
1130 Bertie Street
PO Box 1218
Fort Erie, Ontario Canada L2a5y2

ConAgra Trade Group, Inc.
Eleven ConAgra Drive, Suite 5022
Omaha, NE 68102-5022

Consolidated Edison Company of New York
128 West End Ave.
New York, NY 10023

Consolidated Edison Solutions
701 Westchester Ave.
Suite 201 W
White Plains, NY 10604

Constellation New Energy, Inc.
535 Boylston Street
Top Floor
Boston, MA 02116

Delmarva Power & Light Company
P.O. Box 6066
Newark, DE 19714-6066

Detroit Edison Company (The)
2000 Second Avenue
Detroit, MI 48226

Energy Authority (The)
76 South Laura Street
Jacksonville, FL 32202

Entergy Services, Inc.
Parkwood Two Building, Ste. 300
10055 Grogan's Mill Road
The Woodlands, TX 77380

Florida Power & Light
11770 U.S. Highway 1
South Tower, Fourth Floor
North Palm Beach, FL 33408

Florida Power Corporation
Attn: Contract Administration
410 S. Wilmington St.
Raleigh, NC 27601

Hamersville (Village of)
P.O. Box 219
Hamersville, OH 45130

IES Utilities, Inc.
300 Sheridan Ave,
Centerville, IA 52544

Illinois Municipal Electric Agency
919 South Spring Street
Springfield, IL 62704
<table>
<thead>
<tr>
<th>Company Name</th>
<th>Address Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana Municipal Power Agency</td>
<td>11610 North College Avenue, Carmel, IN 46032</td>
</tr>
<tr>
<td>Indianapolis Power &amp; Light Company</td>
<td>25 Monument Circle, Indianapolis, IN 46201</td>
</tr>
<tr>
<td>Intercoast Power Marketing Company</td>
<td>206 East Second St, Davenport, IA 52801</td>
</tr>
<tr>
<td>Kansas City Board of Public Utilities</td>
<td>700 Minnesota Avenue, Kansas City, KS 66101</td>
</tr>
<tr>
<td>LG&amp;E Energy Marketing Inc.</td>
<td>220 West Main Street 7th Floor, Louisville, KY 40202</td>
</tr>
<tr>
<td>Logansport, Indiana (City of)</td>
<td>6th &amp; Broadway, Logansport, IN 46947</td>
</tr>
<tr>
<td>Louisiana Generating LLC</td>
<td>112 Telly St., New Roads, LA 70760</td>
</tr>
<tr>
<td>Louisville Gas &amp; Electric Company/Kentucky Utilities Company</td>
<td>220 West Main Street, Louisville, KY 40202</td>
</tr>
<tr>
<td>MIECO, Inc.</td>
<td>Shoreline Square, 301 East Ocean Boulevard, Suite 1100, Long Beach, CA 90802-4832</td>
</tr>
<tr>
<td>New York State Electric &amp; Gas Corporation</td>
<td>Corporate Drive, Kirkwood Industrial Park, P.O. Box 5224, Binghamton, NY 13902-5224</td>
</tr>
<tr>
<td>NIPSCO Energy Services, Inc.</td>
<td>801 E. 86th Avenue, Merrillville, IN 46410</td>
</tr>
<tr>
<td>Nordic Electric, LLC</td>
<td>2010 Hogback Road, Suite 4, Ann arbor, MI 48105</td>
</tr>
<tr>
<td>Northeast Utilities Service Company</td>
<td>107 Selden Street, Berlin, CT 06037-1616</td>
</tr>
<tr>
<td>Northern States Power Co.</td>
<td>414 Nicollet Mall, Minneapolis, MN 55401</td>
</tr>
<tr>
<td>Northern Indiana Public Service Company</td>
<td>5265 Hohman Avenue, Hammond, IN 46320-1775</td>
</tr>
<tr>
<td>OGE Energy Resources, Inc.</td>
<td>408 Central Park Two, 515 Central Park Drive, Suite 400, Oklahoma City, OK 73105-1722</td>
</tr>
<tr>
<td>Oglethorpe Power Corporation</td>
<td>3100 East Exchange Place, Tucker, GA 30085</td>
</tr>
<tr>
<td>Ohio Valley Electric Corporation</td>
<td>One Riverside Plaza, Columbus, OH 43215</td>
</tr>
<tr>
<td>Orange &amp; Rockland Utilities Inc.</td>
<td>390 West Route 59, Spring Valley, NY 10977-5300</td>
</tr>
<tr>
<td>Paragould Light and Water Commission</td>
<td>1901 Jones Road, Piketon, OH 45661</td>
</tr>
<tr>
<td>PG&amp;E Energy Trading – Power, L.P.</td>
<td>7500 Old Georgetown Road, 13th Floor, Bethesda, MD 20814</td>
</tr>
<tr>
<td>Phibro Power LLC</td>
<td>500 Nyala Farms Road, Westport, CT 06880-6262</td>
</tr>
</tbody>
</table>
Piqua, OH (The City of)
123 Bridge Street
Piqua, OH 45356-5001

Potomac Electric Power Company
1900 Pennsylvania Avenue, N.W.
Washington, DC 20068

Quest Energy, L.L.C.
173 Parkland Plaza, Suite B-1
Ann Arbor, MI 48103

Seminole Electric Cooperative, Inc.
16313 N Dale Mabry Highway
PO Box 272000
Tampa, FL 33688

Southern Company Services, Inc.
600 North 18th Street, GS-8529
Birmingham, AL 35202-2625

Springfield (City of) City Water, Light and Power
4th Fl, Municipal Center East
800 E. Monroe
Springfield, IL 62757

SUEZ Energy Marketing NA, Inc.
1990 Post Oak Blvd, Suite 1900
Houston, TX 77056

Wisconsin Electric Power Company
231 W. Michigan Street, A214
Milwaukee, WI 53203

Wolverine Power Supply Cooperative, Inc.
10125 West Watergate Road
Cadillac, MI 49601

Portland General Electric Company
121 SW Salmon Street
Portland, OR 97204

Proliance Energy
135 N. Pennsylvania Street
Indianapolis, IN 46204-2482

Ripley (Village of)
P.O. Box 219
Ripley, OH 45167

Southeastern Power Administration
2 S. Public Square
Elberton, FA 30635

Southern Indiana Gas & Electric Company
One Vectren Square
Evansville, IN 47708

Stand Energy Corporation
1077 Celestial Street
Rookwood Building, Suite 110
Cincinnati, OH 45202

Tallahassee (City of)
Electric Control Center
400 E. Van Buren Street
Tallahassee, FL 32301-4456

Wisconsin Public Service Corporation
700 N. Adams
Green Bay, WI 54307

Wyandotte Department of Municipal Service
3005 Biddle Avenue
Wyandotte, MI 48192
<table>
<thead>
<tr>
<th>Company Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama Electric Cooperative, Inc.</td>
</tr>
<tr>
<td>P.O. Box 550</td>
</tr>
<tr>
<td>2027 East Three Notch Street</td>
</tr>
<tr>
<td>Andalusia, AL 36420</td>
</tr>
<tr>
<td>Allegheny Energy Supply Company, LLC</td>
</tr>
<tr>
<td>4350 Northern Pike</td>
</tr>
<tr>
<td>Monroeville, PA 15146-2841</td>
</tr>
<tr>
<td>Ameren Energy Marketing Company</td>
</tr>
<tr>
<td>1901 Chouteau Ave.</td>
</tr>
<tr>
<td>Mail Code AME 950</td>
</tr>
<tr>
<td>St. Louis, MO 63166-6149</td>
</tr>
<tr>
<td>Ameren Energy, Inc. as Agent</td>
</tr>
<tr>
<td>1901 Chouteau Avenue, MC-950</td>
</tr>
<tr>
<td>St. Louis, MO 63103</td>
</tr>
<tr>
<td>American Electric Power Service Corporation as agent for the AEP Operating Companies</td>
</tr>
<tr>
<td>155 West Nationwide Blvd.</td>
</tr>
<tr>
<td>Columbus, OH 43215</td>
</tr>
<tr>
<td>American Municipal Power – Ohio, Inc.</td>
</tr>
<tr>
<td>2600 Airport Drive</td>
</tr>
<tr>
<td>Columbus, OH 43219</td>
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<tr>
<td>Aquila Merchant Services, Inc.</td>
</tr>
<tr>
<td>1100 Walnut Street, Suite 3300</td>
</tr>
<tr>
<td>Kansas City, MO 64106</td>
</tr>
<tr>
<td>Barclays Bank PLC</td>
</tr>
<tr>
<td>10 The South Colonnade</td>
</tr>
<tr>
<td>Canary Wharf</td>
</tr>
<tr>
<td>London</td>
</tr>
<tr>
<td>United Kingdom E14 4PU</td>
</tr>
<tr>
<td>Big Rivers Electric Corporation</td>
</tr>
<tr>
<td>201 Third Street</td>
</tr>
<tr>
<td>Henderson, KY 42420</td>
</tr>
<tr>
<td>Braintree Electric Light Department (Energy New England as Agent)</td>
</tr>
<tr>
<td>100 Foxborough Blvd</td>
</tr>
<tr>
<td>Foxborough, MA 02035</td>
</tr>
<tr>
<td>Brazos Electric Power Cooperative, Inc.</td>
</tr>
<tr>
<td>2404 LaSalle Avenue</td>
</tr>
<tr>
<td>P.O. Box 2585</td>
</tr>
<tr>
<td>Waco, TX 76702-2585</td>
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<tr>
<td>Bristol, Virginia (City of)</td>
</tr>
<tr>
<td>P.O. Box 8100</td>
</tr>
<tr>
<td>15022 Lee Highway</td>
</tr>
<tr>
<td>Bristol, VA 24203</td>
</tr>
<tr>
<td>Brookfield Energy Marketing Inc.</td>
</tr>
<tr>
<td>2 Montreal Road West, Suite 200</td>
</tr>
<tr>
<td>Masson-Angers, Quebec, Canada J8M2EI</td>
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<tr>
<td>Bryan Texas Utilities</td>
</tr>
<tr>
<td>603 Atkins St.</td>
</tr>
<tr>
<td>Bryan, TX 77805</td>
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<tr>
<td>Calpine Energy Management, L.P.</td>
</tr>
<tr>
<td>717 Texas Avenue</td>
</tr>
<tr>
<td>Suite 1000</td>
</tr>
<tr>
<td>Houston, TX 77002</td>
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<tr>
<td>Calpine Energy Services, L.P.</td>
</tr>
<tr>
<td>717 Texas Avenue, Suite 1000</td>
</tr>
<tr>
<td>Houston, TX 77002</td>
</tr>
</tbody>
</table>
Cargill Power Markets, LLC
12700 Whitewater Drive
Minnetonka, MN 55343

Central Virginia Electric Cooperative
PO Box 247
Lovingston, VA 22949

Carolina Power & Light Company
da Progress Energy Carolinas, Inc.
410 S. Wilmington Street (PEB 9A)
Raleigh, NC 27601

City of Austin d/b/a Austin Energy
721 Barton Springs Road
Suite 200
Austin, Texas 78704

Citadel Energy Products LLC
131 South Dearborn Street
Chicago, Illinois 60603

City of Cleveland, Division of Cleveland Public Power
1300 Lakeside Avenue
Cleveland, Ohio 44114

City of Hamilton
345 High Street
Hamilton, OH 45011

Commerce Energy, Inc.
15901 Red Hill Ave., Suite 100
Tustin, CA 92780

Cobb Electric Membership Corporation
100 EMC Parkway
Marietta, GA 30061

ConocoPhillips Company
600 North Dairy Ashford CH-1081
Houston, TX 77079-1175

Conectiv Energy Supply, Inc.
500 North Wakefield Drive
Newark, Delaware 19702

Constellation Energy Commodities Group, Inc.
111 Market Place, Suite 500
Baltimore, MD 21202

Consolidated Edison Energy
701 Westchester Avenue, Suite 201 W
White Plains, NY 10604

Dominion Energy Marketing, Inc.
120 Tredegar Street
Richmond, VA 23219

Coral Power, LLC
909 Fannin, Plaza Level 1
Houston, TX 77010

Duquesne Light Company
2839 New Beaver Ave.
M/D N2-SO8-2
Pittsburgh, PA 15233

DTE Energy Trading, Inc.
414 S. Main Street, Ste. 200
Ann Arbor, MI 48104

Dynergy Power Marketing, Inc.
1000 Louisiana, Suite 5800
Houston, Texas 77002-5050

Duquense Power LP
411 Seventh Ave. M/D 8-2
Pittsburgh, PA 15219

Edison Mission Marketing & Trading Inc.
160 Federal Street, 4th Floor
Boston, MA 02110

Eagle Energy Partners I, LP
4201 FM 1960 West, Suite 100
Houston, TX 77068

Exelon Energy Company
2315 Enterprise Drive
Westchester, IL 60154
<table>
<thead>
<tr>
<th>Company Name</th>
<th>Address</th>
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<tbody>
<tr>
<td>EnergyUSA-TPC Corp.</td>
<td>1500 165th Street, CISC Building, Hammond, IN 46320</td>
</tr>
<tr>
<td>FirstEnergy Solutions Corp.</td>
<td>395 Ghent Road, Room 114, Akron, OH 44333</td>
</tr>
<tr>
<td>Exelon Generation Company, LLC</td>
<td>300 Exelon Way, Kennett Square, PA 19348</td>
</tr>
<tr>
<td>Hoosier Energy Rural Electric</td>
<td>7398 North State Road 37, Bloomington, IN 47402-0908</td>
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<tr>
<td>Coop., Inc.</td>
<td></td>
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<tr>
<td>Gulf States Wholesale Equity Partners, LP</td>
<td>5420 LBJ Frwy, Suite 1355, Dallas, TX 75240</td>
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<tr>
<td>J Aron &amp; Company</td>
<td>85 Broad Street, New York, NY 10004</td>
</tr>
<tr>
<td>HQ Energy Services (US) Inc.</td>
<td>75, Rene-Levesque, 18th Floor, Montreal (Quebec) H2Z 1A4</td>
</tr>
<tr>
<td>Kenergy Corp.</td>
<td>3111 Fairview Dr, Owensboro, KY 42303</td>
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<tr>
<td>Integrys Energy Services, Inc.</td>
<td>1088 Springhurst Drive, Green Bay, WI 54304</td>
</tr>
<tr>
<td>Luminant Energy Company</td>
<td>1717 Main Street, Ste. 2000, Dallas, TX 75201</td>
</tr>
<tr>
<td>Keystone Energy Partners, LP</td>
<td>1111 Bagby, Suite 2510, Houston, TX 77002</td>
</tr>
<tr>
<td>Merrill Lynch Commodities, Inc.</td>
<td>20 East Greenway Plaza, Suite 700, Houston, TX 77046</td>
</tr>
<tr>
<td>Magnolia Energy LP</td>
<td>15 Wayside Rd, Burlington, MA 01803-4609</td>
</tr>
<tr>
<td>Mirant Americas Energy Trading</td>
<td>1155 Perimeter Center West, Ste 130, Atlanta, GA 30338-5416</td>
</tr>
<tr>
<td>MidAmerican Energy Company</td>
<td>4299 NW Urbandale Drive, Urbandale, IA 50322</td>
</tr>
<tr>
<td>North Carolina Municipal Power Agency No. 1</td>
<td>1427 Meadowood Blvd, Raleigh, NC 27604</td>
</tr>
<tr>
<td>Morgan Stanley Capital Group, Inc.</td>
<td>1585 Broadway, 4th Floor, New York, NY 10036</td>
</tr>
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<td>Occidental Power Services, Inc.</td>
<td>5 Greenway Plaza, Suite 110, Houston, TX 77046</td>
</tr>
<tr>
<td>NRG Power Marketing Inc.</td>
<td>901 Marquette Ave., Ste. 2300, Minneapolis, MN 55402-3265</td>
</tr>
<tr>
<td>Ontario Power Generation, Inc.</td>
<td>700 University Ave, H9-H18, Toronto Ontario, Canada M5G1X6</td>
</tr>
</tbody>
</table>
ONEOK Energy Services Company, L.P.
100 West Fifth Street
Suite 1600
Tulsa, OK 74103

Pepco Energy Services, Inc.
1300 North 17th Street, Suite 1600
Arlington, VA 22209

Otter Tail Corporation
dba Otter Tail Power Company
215 South Cascade
Fergus Falls, MN 56538-0496

PPM Energy, Inc.
1125 NW Couch Street, Suite 700
Portland, OR 97209

PPL Energy Plus Co, LLC
2 North Ninth Street (GENTW20)
Allentown, PA 18101-1179

PSEG Energy Resources & Trade LLC
80 Park Plaza
Newark, NJ 07102-4194

Progress Ventures, Inc.
PO Box 1551
410 S. Wilmington Street, PEB9A
Raleigh, NC 27601

Reliant Energy Services, Inc.
1111 Louisiana Street, Suite 1500
Houston, TX 77210-4455

Rainbow Energy Marketing Corporation
919 South 7th Street, Suite 405
Bismarck, ND 58504

Select Energy, Inc.
107 Selden Street
Berlin CT 06037

Ripley, Ohio (The Village of)
123 Waterworks Road
Ripley, OH 45167

Sempra Energy Trading Corp.
58 Commerce Road
Stamford, CT 06902

Sempra Energy Solutions
101 Ash Street, HQ11
San Diego, CA 92101

Southern Illinois Power Cooperative
11543 Lake of Egypt Road
Marion, IL 62959-8500

South Carolina Electric & Gas Company
1426 Main Street
Mail Code 072
Columbia, SC 29201

Southern Indiana Gas & Electric Company
\(d/b/a\) Vectren Energy Delivery of Indiana and Hoosier Energy Rural Electric
One Vectren Square
Evansville, IN 47708

Strategic Energy, LLC
2 Gateway Center
Pittsburgh, PA 15222

Taunton Municipal Light Plant (Energy New England as Agent)
100 Foxborough Blvd, Suite 110
Foxborough, MA 02035

Tenaska Power Services Co.
1701 East Lamar Blvd., Suite 100
Arlington, TX 76006

TransAlta Energy Marketing (US) Inc.
Box 1900, Station “M”
110-112th Avenue SW
Calgary, Alberta
T2P 2M1
The Dayton Power & Light Company
1900 Dryden Road
P.O. Box 1807
Dayton, OH 45401

UGI Utilities, Inc.
100 Kachel Blvd., Suite 400
Reading, PA 19612

UBS AG
1500 Louisiana, 5th Floor
Houston, TX 77002

Utilities Commission, City of New Smyrna Beach, Florida
210 Sams Ave., New Smyrna Beach, FL 32168

Union Power Partners, L.P.
702 N. Franklin Street
Plaza 8
Tampa, FL 33602

Virginia Electric & Power Company
120 Tredagar Street
Richmond, VA 23219

The Village of Georgetown
301 S. Main Street
Georgetown, OH 45121

Western Farmer's Electric Cooperative
701 N.E. 7th Street
Anadarko, OK 73005

Westar Energy, Inc.
818 South Kansas Avenue
Topeka, KS 66612

Williams Gas Marketing, Inc.
One Williams Center
Tulsa, OK 74172

MISO TARIFF NO. 9 LIST

Alliant Energy Corporate Services, Inc.
as Agent for Wisconsin Power and Light Company and
Interstate Power and Light Company
4902 North Biltmore Lane
Madison, Wisconsin 53707

Ameren Services Company on behalf of
Union Electric Co.
Central Illinois Public Services Co.,
Illinois Power Co. and
Central Illinois Light Co.
Ameren Services Co.
1901 Chantenau
St. Louis, MD 62013

Basin Electric Power Cooperative
MAPPCOR as Agent
2774 Cleveland Avenue North
Roseville, MN 55113

Big Rivers Electric Corporation
201 Third Street
P.O. Box 24
Henderson, KY 42420

City of Columbia Water & Light Department
P.O. Box 6015
Columbia, MO 65205-6015

City of Springfield Illinois, Office of Public Utilities
1008 E. Miller Street
Springfield, IL 62702

Exhibit F 12
Missouri River Energy Services  
MAPPCOR as Agent  
2774 Cleveland Avenue North  
Roseville, MN 55113

Nebraska Public Power District  
MAPPCOR as Agent  
2774 Cleveland Avenue North  
Roseville, MN 55113

Northern Indiana Public Service Company  
1500 165th Street  
EDCC Building  
Hammond, IN 46320

Northern States Power Company  
MAPPCOR as Agent  
2774 Cleveland Avenue North  
Roseville, MN 55113

Omaha Public Power District  
MAPPCOR as Agent  
2774 Cleveland Avenue North  
Roseville, MN 55113

PSI Energy, Inc. d/b/a Duke Energy  
Indiana, Inc. and  
The Union, Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc.  
Duke Energy  
Attn: John Swez, Manager, Asset Management  
139 East Fourth Street, Room EA606  
Cincinnati, OH 45201

Southern Illinois Power Cooperative  
11543 Lake of Egypt Road  
Marion, IL 62959

Southern Indiana Gas & Electric Company  
Vectren Corp.  
Wholesale Power Marketing  
Vectren Corp.  
1 North Main Street  
Evansville, IN 47711

Southern Minnesota Municipal Power Agency  
MAPPCOR as Agent  
2774 Cleveland Avenue North  
Roseville, MN 55113

The Cleveland Electric Illuminating Company Ohio  
Edison Company, Pennsylvania Power Company,  
The Toledo Edison Company and FirstEnergy Solutions  
and on behalf of American Transmission Systems Incorporated  
FirstEnergy Corp.  
76 South Main Street  
Akron, OH 44308

The Detroit Edison Company  
2000 Second Avenue  
Detroit, MI 48226

Union Electric Company d/b/a AmerenUE  
American Services Co.  
1901 Chautenu  
St. Louis, MO 63013
Upper Peninsula Power Company  
Director Electric Supply & Operations  
Wisconsin Public Service Corporation  
600 N. Adams Street  
P.O. Box 19002  
Green Bay, WI 54307-9002

Western Area Power Administration  
MAPPCOR as Agent  
2774 Cleveland Avenue North  
Roseville, MN 55113

Wisconsin Electric Power Company d/b/a  
We Energies  
We Energies  
W237 N 1500 Busse Road  
Waukesha, WI 53188

Wisconsin Power and Light, Interstate Power Company  
and IES Utilities, Inc.  
MAPPCOR as Agent  
2774 Cleveland Avenue North  
Roseville, MN 55113

Wisconsin Public Service Corporation  
Director Electric Supply & Operations  
Wisconsin Public Service Corporation  
600 N. Adams Street  
P.O. Box 19002  
Green Bay, WI 54307-9002
Exhibit G: Description of Jurisdictional Facilities of Applicants and Their Affiliates

The Applicants’ and their affiliates’ jurisdictional facilities that are relevant to the Commission’s evaluation of this Application are described in Sections I, II and III of this Application. Applicants request waiver of any requirement to provide descriptions of jurisdictional facilities of affiliates that are not relevant to this Transaction.
Exhibit H: Jurisdictional Facilities and Securities Associated with or Affected by the Transaction

The jurisdictional facilities and securities associated with or affected by the Transaction are described in Parts II and III of this Application.
Exhibit I: Contracts with Respect to the Disposition of Facilities

The form of Asset Contribution Agreement and Debt Assumption Agreement are attached hereto. There are no other contracts with respect to the disposition of facilities. Rather, as explained in Section II, the other steps of the Transaction will be effectuated through Board resolutions.
ASSET CONTRIBUTION AGREEMENT

BY AND BETWEEN

DUKE ENERGY OHIO, LLC

AND

______________________________, LLC

Dated as of ________________, 2008
ARTICLE I  DEFINITIONS ............................................................... 2
Section 1.01. Definitions ................................................................ 2

ARTICLE II  TRANSFER OF ASSETS ........................................... 9
Section 2.01. Transfer of Assets .................................................... 9
Section 2.02. Excluded Assets .................................................... 11
Section 2.03. Assumed Liabilities ................................................. 12
Section 2.04. Excluded Liabilities ............................................... 14

ARTICLE III  ASSET TRANSFER; CLOSING ................................. 15
Section 3.01. Asset Transfer .......................................................... 15
Section 3.02. Inventory; Transaction Costs ................................... 15
Section 3.03. Proration ................................................................. 15
Section 3.04. Closing ................................................................. 16
Section 3.05. Closing Deliveries .................................................. 16

ARTICLE IV  REPRESENTATIONS AND WARRANTIES ................... 17
Section 4.01. Representations and Warranties of Transferor .......... 17
Section 4.02. Representations and Warranties of Transferee .......... 22

ARTICLE V  COVENANTS .............................................................. 23
Section 5.01. Books and Records .................................................. 23
Section 5.02. Finder’s Fees .......................................................... 24
Section 5.03. Tax Matters ........................................................... 24
Section 5.04. Further Assurances .................................................. 24
Section 5.05. Survival ................................................................. 25

ARTICLE VI  MISCELLANEOUS PROVISIONS ................................. 25
Section 6.01 Notices ................................................................ 25
Section 6.02. Waiver ................................................................. 26
Section 6.03. Entire Agreement; Amendment etc. ......................... 26
Section 6.04. Assignment ............................................................ 27
Section 6.05. Severability ............................................................ 27
Section 6.06. Bulk Sales Laws ....................................................... 28
Section 6.07. Governing Law ....................................................... 28
Section 6.08. Counterparts; Facsimile Execution ......................... 28
Section 6.09. Schedules .............................................................. 28
Section 6.10. Specific Performance ............................................... 28
Section 6.11. Dispute Resolution

EXHIBITS

Exhibit A  Form of Deed
Exhibit B  Form of Bill of Sale
Exhibit C  Form of Assumption Agreement

SCHEDULES

Schedule 1.01  Assumed Payables and Short-Term Debt
Schedule 2.01(b)  Improvements and Tangible Personal Property
Schedule 2.01(d)  Transferred Contracts
Schedule 2.01(e)  Transferred Permits
Schedule 2.01(i)  Transmission Assets
Schedule 2.04(e)  Fines and Penalties Not Excluded
Schedule 2.04(i)  Bond Obligations Not Assumed
Schedule 2.04(j)  Environmental Liabilities and Tort Liabilities
Schedule 4.01(c)(ii)  Transferor’s Required Governmental and Third Party Consents
Schedule 4.01(e)  Real Property
Schedule 4.01(m)  Environmental Permits (see Section I of Schedule 4.01(m))
Schedule 4.01(k)  Transferor Contracts
Schedule 4.01(l)  Legal Proceedings
Schedule 4.01(m)  Permits (see Section II of Schedule 4.01(m))
Schedule 4.02(c)(ii)  Transferee’s Required Governmental and Third Party Consents
This ASSET CONTRIBUTION AGREEMENT (this “Agreement”), dated as of _______________, is by and between Duke Energy Ohio, LLC, an Ohio limited liability company (“Transferor”), and ___________________, LLC, an Ohio limited liability company (“Transferee”). Collectively, Transferee and Transferor may be referred to herein as the “Parties” and each, individually, as a “Party”.

W I T N E S S E T H

WHEREAS, Transferor owns a [coal-fired] electric [generating station/generating unit] with a nameplate rating of ___ megawatts located in ________________________ , such [generating station/generating unit] being comprised of [a boiler and steam turbine generator, together with certain other improvements, equipment, assets, properties (both tangible, including real property, and intangible), facilities and rights associated therewith or ancillary thereto] [(“Name”)];

WHEREAS, Transferor desires to transfer and assign to Transferee, and Transferee desires to acquire and assume from Transferor, the Transferred Assets (as hereinafter defined) and certain associated liabilities, upon the terms and conditions hereinafter set forth;

WHEREAS, concurrently with, and as a condition to, the execution and delivery of this Agreement, Transferor and Transferee are executing and delivering an Assumption Agreement, pursuant to which, and subject to the terms and conditions thereof, Transferor has agreed to assign and Transferee has agreed to assume, concurrently with the closing of the transactions contemplated herein, the liabilities respectively described therein;

WHEREAS, Transferor and Transferee intend that the transfer of the Transferred Assets contemplated herein, in conjunction with the assignments effected by the Assumption Agreement associated with this Agreement qualify, collectively, as contributions to capital under Section 351 of the Internal Revenue Code of 1986, as amended; and

WHEREAS, Transferor directly owns all of the outstanding limited liability interests of Transferee.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, agreements, representations and warranties hereinafter set forth, the Parties, intending to be legally bound, hereby agree as follows:
ARTICLE I
DEFINITIONS

SECTION 1.01. Definitions. (a) As used in this Agreement, the following terms have the following meanings:

“Additional Transfer Consideration” has the meaning set forth in Section 3.02.

“Affiliate” means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Ancillary Agreements” means the Assumption Agreement, the Bill of Sale, the Deed, and any other agreements or instruments entered into between the Parties with respect to the transactions contemplated by this Agreement.

“Assumption Agreement” means that certain Assumption Agreement to be entered into by and between Transferor and Transferee at Closing, in substantially the form attached hereto as Exhibit C(1).

“Assumed Liabilities” has the meaning set forth in Section 2.03.

“Assumed Payables” means a certain amount of those payables owed by Transferor with respect to the Transferred Assets, as set forth in Schedule 1.01.

“Bill of Sale” means that certain Bill of Sale to be executed and delivered at Closing by Transferor to Transferee, in substantially the form attached hereto as Exhibit B.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time.

“Closing” has the meaning set forth in Section 3.04.

“Closing Date” has the meaning set forth in Section 3.04.

“Closing Inventory” means an amount in dollars equal to Transferor’s ownership interest in all Inventories as of the Effective Time.

“CRD” has the meaning set forth in Section 7.11.

“CWIP” has the meaning set forth in the definition of “Improvements”.

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__/__/____
“Deed” means that certain Warranty Deed [and Assignment of Adjoining Easement and License Interests] to be executed and delivered at Closing by Transferor to Transferee, in substantially the form attached hereto as Exhibit A.

“Direct Claim” has the meaning set forth in Section 6.03(c).

“Effective Time” has the meaning set forth in Section 3.04.

“Emissions Allowances” means an authorization issued by a Governmental Authority pursuant to a statutory or regulatory program promulgated by a Governmental Authority pursuant to which air emissions sources subject to the program are authorized to make a prescribed quantity of air emissions.

“Encumbrance” means any security interest, pledge, mortgage, lien, charge, option to purchase, lease, claim, restriction, covenant, title defect, hypothecation, assignment, deposit arrangement or other encumbrance of any kind or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or title retention agreement).

“Environmental Condition” means the presence or Release to the environment, whether at the Real Property or otherwise, of Hazardous Substances, including any migration of Hazardous Substances through air, soil or groundwater at, to or from the Real Property or at, to or from any Off-Site Location, regardless of when such presence or Release occurred or is discovered.

“Environmental Laws” means all (a) Laws relating to pollution or protection of the environment, natural resources or human health and safety, including Laws relating to Releases or threatened Releases of Hazardous Substances or otherwise relating to the manufacture, formulation, generation, processing, distribution, use, treatment, storage, Release, transport, Remediation, abatement, cleanup or handling of Hazardous Substances, (b) Laws with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Substances and (c) Laws relating to the management or use of natural resources.

“Environmental Liabilities” has the meaning set forth in Section 2.03(b).

“Environmental Permit” has the meaning set forth in Section 4.01(i).

“Excluded Assets” has the meaning set forth in Section 2.02.

“Excluded Liabilities” has the meaning set forth in Section 2.04.

“FERC” means the Federal Energy Regulatory Commission.
“GAAP” means United States generally accepted accounting principles as in effect from time to time, applied on a consistent basis.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.

“Governmental Authority” means any: (a) nation, state, county, city, town, village, district, or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign, or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); (d) multi-national organization or body; or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

“Hazardous Substances” means (a) any petrochemical or petroleum products, oil or coal ash, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid which may contain levels of polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “contaminants,” “pollutants,” “toxic pollutants,” or words of similar meaning and regulatory effect under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

"Improvements" means all buildings, structures, machinery and equipment (including all fuel handling and storage facilities), fixtures, construction work in progress (“CWIP”), and other improvements, including all piping, cables and similar equipment forming part of the mechanical, electrical, plumbing or HVAC infrastructure of any building, structure or equipment, located on and affixed to the Real Property.

“Indemnitee” has the meaning set forth in Section 6.02(c).

“Inventories” means (i) all inventories of fuels owned or leased by Transferor for use at [Name], whether located on or in transit to the Real Property or stored offsite, which, as of the Effective Time have, a value of $__________, and (ii) all materials and supplies, including without limitation, spare parts, owned by Transferor for use at [Name], which, as of the Effective Time, have a value of $__________.

“Knowledge” means the actual knowledge of the corporate officer or officers of the specified Person charged with responsibility for the particular function as of the date
of this Agreement, or, with respect to any certificate delivered pursuant to this Agreement, the date of delivery of the certificate, after reasonable inquiry by each such officer of selected employees of the specified Person whom such officer believes, in good faith, to be the persons generally responsible for the subject matters to which the knowledge is pertinent.

“Laws” means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any foreign country and any domestic or foreign state, county, city or other political subdivision or of any Governmental Authority.

“Liability” means any liability or obligation, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether incurred or consequential, and whether due or to become due.

“Material Adverse Effect” means (i) any event, circumstance or condition materially impairing the ability of Transferor to perform its obligations under this Agreement or any Ancillary Agreement, or (ii) any change in or effect on Transferor or the Transferred Assets that is materially adverse to the Transferred Assets, other than (a) any change resulting from changes in the international, national, regional or local wholesale or retail markets for electricity, (b) any change resulting from changes in the international, national, regional or local markets for fuel used at [Name], (c) any change resulting from changes in the North American, national, regional or local electric transmission system, and (d) any change in Law generally applicable to similarly situated Persons.

“[Name]” has the meaning set forth in the recitals to this Agreement.

“Net Book Value” means an amount in dollars, as reflected in the corresponding line item or items of the balance sheet of Transferor as of the applicable date, equal to total fixed assets net of accumulated depreciation.

“Off-Site Location” means any real property other than the Real Property.

“Organizational Documents” means (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) the limited liability company or operating agreement and certificate of formation of a limited liability company; (c) the partnership agreement and any statement of partnership of a general partnership; (d) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (e) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; and (f) any amendment to any of the foregoing.

“Parent” has the meaning set forth in the first paragraph of this Agreement.

“Party” has the meaning set forth in the first paragraph of this Agreement.
“Permits” has the meaning set forth in Section 4.01(m).

“Permitted Encumbrances” means (i) the respective rights and obligations of the Parties under this Agreement and the Ancillary Agreements; (ii) all matters that would be disclosed in a current title commitment or title policy or survey for the Real Property; (iii) Encumbrances for Taxes not yet due or which are being contested in good faith by appropriate proceedings and that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (iv) carriers’, warehousemen’s, materialmen’s, mechanics’, repairman’s or other like Encumbrances arising in the ordinary course of business that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (v) zoning, planning, conservation restriction and other land use and environmental regulations by Governmental Authorities; (vi) Encumbrances resulting from legal proceedings being contested in good faith by appropriate proceedings that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (vii) other Encumbrances that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

“Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Authority.

“Prime Rate” means as of any date, the prime rate as published in The Wall Street Journal on such date or, if not published on such date, on the most recent date of publication.

“Real Property” has the meaning set forth in Section 4.01(e).

“Release” means any release, spill, leak, discharge, disposal of, pumping, pouring, emitting, emptying, injecting, leaching, dumping or allowing to escape into or through the environment.

“Remediation” means an action of any kind to address an Environmental Condition or a Release of Hazardous Substances or the presence of Hazardous Substances at the Real Property or an Off-Site Location, including the following activities to the extent they relate to, result from or arise out of the presence of a Hazardous Substance at the Real Property or an Off-Site Location: (a) monitoring, investigation, assessment, treatment, cleanup, containment, removal, mitigation, response or restoration work; (b) obtaining any permits, consents, approvals or authorizations of any Governmental Authority necessary to conduct any such activity; (c) preparing and implementing any plans or studies for any such activity; (d) obtaining a written notice from a Governmental Authority with jurisdiction over the Real Property or an Off-Site Location under Environmental Laws that no material additional work is required by such Governmental Authority; (e) the use, implementation, application, installation, operation
or maintenance of removal actions on the Real Property or an Off-Site Location, remedial technologies applied to the surface or subsurface soils, excavation and treatment or disposal of soils at an Off-Site Location, systems for long-term treatment of surface water or groundwater, engineering controls or institutional controls; and (f) any other activities reasonably determined by a Party to be necessary or appropriate or required under Environmental Laws to address an Environmental Condition or a Release of Hazardous Substances or the presence of Hazardous Substances at the Real Property or an Off-Site Location.

“Representatives” means, with respect to a Party, such respective directors (or parties performing similar functions), officers, employees, representatives, agents and advisors (including accountants, legal counsel, environmental consultants and financial advisors).

“Short-Term Debt” means certain amounts owed by Transferor, as set forth in Schedule 1.01.

“Tax” means any tax, charge, fee, levy, penalty or other assessment imposed by any federal, state, local or foreign taxing authority, including, but not limited to, any income, gross receipts, excise, property, sales, transfer, use, franchise, payroll, withholding, social security or other tax, including any interest, penalty or addition attributable thereto.

“Tort Liabilities” has the meaning set forth in Section 2.03(c).

“Transfer Consideration” has the meaning set forth in Section 3.01.

“Transferee” has the meaning set in the first paragraph of this Agreement.

“Transferee’s Required Consents” means Transferee’s Required Governmental Consents and Transferee’s Required Third-Party Consents.

“Transferee’s Required Governmental Consents” means the consents, approvals, filings and/or notices of, with, from or to Governmental Authorities listed in Section I of Schedule 4.02(c)(ii).

“Transferee’s Required Third-Party Consents” means the consents, approvals, filings and/or notices of, with, from or to Third Parties (other than Governmental Authorities) listed in Section II of Schedule 4.02(c)(ii).

“Transferred Assets” has the meaning set forth in Section 2.01.

“Transferor” has the meaning set forth in the first paragraph of this Agreement.

“Transferor’s Real Property” means all of Transferor’s ownership interest in the generating station located at [ ].
“Transferor’s Required Consents” means Transferor's Required Governmental Consents and Transferor’s Required Third-Party Consents.

“Transferor’s Required Governmental Consents” means the consents, approvals, filings and/or notices of, with, from or to Governmental Authorities listed in Section I of Schedule 4.01(c)(ii).

“Transferor’s Required Third-Party Consents” means the consents, approvals, filings and/or notices of, with, from or to Third Parties (other than Governmental Authorities) listed in Section II of Schedule 4.01(c)(ii).

“Transferor’s Retained Real Property” has the meaning set forth in Section 2.02(a).

“Transferred Contracts” has the meaning set forth in Section 2.01(d).

“Transferred Intellectual Property” has the meaning set forth in Section 2.01(h).

“Transferred Permits” has the meaning set forth in Section 2.01(e).

“Transmission Assets” has the meaning set forth in Section 2.01(j).

(b) Interpretation. In this Agreement, unless otherwise specified or where the context otherwise requires:

(i) a reference, without more, to a recital is to the relevant recital to this Agreement, to an Article or Section is to the relevant Article or Section of this Agreement, and to a Schedule or Exhibit is to the relevant Schedule or Exhibit to this Agreement;

(ii) words importing any gender shall include other genders;

(iii) words importing the singular only shall include the plural and vice versa;

(iv) the words “include,” “includes” or “including” shall be deemed to be followed by the words “without limitation;”

(v) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(vi) reference to any applicable Law means, if applicable, such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder,
(vii) "or" is used in the inclusive sense of "and/or";

(viii) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto;

(ix) the words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; and

(x) references to any party hereto or any other agreement or document shall include such party's successors and permitted assigns, but, if applicable, only if such successors and assigns are not prohibited by this Agreement.

ARTICLE II
TRANSFER OF ASSETS

Section 2.01. Transfer of Assets. Upon the terms and conditions set forth in this Agreement, at the Closing but effective as of the Effective Time, Transferor shall transfer, convey, assign and deliver to Transferee as a contribution to capital, and Transferee shall acquire and assume from Transferor as a contribution to capital, free and clear of all Encumbrances, other than Permitted Encumbrances, all of Transferor's right, title and interest in, to and under the real and personal property, tangible and intangible, constituting, or used in connection with or ancillary to the ownership or operation of, the [Name], except as otherwise provided in Section 2.02, each as of the Effective Time, including all of Transferor’s right, title and interest in, to and under the following assets (collectively, the “Transferred Assets”):

(a) the Real Property, as described on Schedule 4.01(e);
(b) the buildings, structures and other Improvements, machinery, equipment (including communications equipment), vehicles, furniture and other personal property located on the Real Property, including those items listed on Schedule 2.01(b), but excluding the Excluded Assets;
(c) all Inventories;
(d) subject to the receipt of any necessary consents and approvals, the contracts or agreements (including any licenses or real or personal property leases, other than any thereof constituting Transferred Permits or Transferred Intellectual Property) listed on Schedule 2.01(d) (the “Transferred Contracts”);
subject to the receipt of any necessary consents and approvals, the permits, licenses, certificates (including without limitation all pollution control certificates and pending applications therefor), certifications, orders and other governmental authorizations listed on Schedule 2.01(e) (the “Transferred Permits”);

(f) all unexpired, transferable warranties and guarantees from manufacturers, vendors and other third parties with respect to any Improvement or item of real or tangible personal property constituting part of the Transferred Assets;

(g) all books, expired purchase orders, operating records, operating, safety and maintenance manuals, engineering design plans, blueprints and as-built plans, specifications, procedures, studies, reports, equipment repair, safety, maintenance or service records, and similar items (subject to the right of Transferor to retain copies of same for its use), other than such items that are proprietary to third parties and accounting records (to the extent that any of the foregoing is contained in an electronic format, Transferor shall reasonably cooperate with Transferee to transfer such items to Transferee in a format that is reasonably acceptable to Transferee);

(h) subject to the receipt of any necessary consents and approvals, any Intellectual Property (the “Transferred Intellectual Property”);

(i) the electrical transmission facilities (as distinguished from generation facilities) located at or forming part of [Name] (whether or not regarded as a “transmission” or “generation” asset for regulatory or accounting purposes), including all energized switchyard facilities on the generation asset side of the appropriate interconnection point and real property directly associated therewith, all substation facilities and support equipment, as well as all permits, contracts and warranties related thereto, including those certain assets and facilities specifically identified on Schedule 2.01(i) (the “Transmission Assets”); without limitation of the foregoing, Transferor is transferring to Transferee all of Transferor’s right, title and interest in and to any generation step-up transformers or any other equipment or facilities connected or appurtenant to [Name] classified as “Station Equipment” under Account No. 353 of the Federal Energy Regulatory Commission’s Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to Provisions of the Federal Power Act, 18 C.F.R. § 101;

(j) the rights of Transferor in and to any causes of action against third parties relating to the Transferred Assets or any part thereof, including any claim for refunds (but excluding any refund, credit, penalty, payment, adjustment or reconciliation related to Taxes paid or due for periods ending prior to the Effective Time in respect of the Transferred Assets, whether such refund, credit, penalty, payment, adjustment or reconciliation is received as a payment or, subject to Section 3.03, as a credit against future Taxes payable), prepayments, offsets, recoupment, insurance proceeds, condemnation awards, judgments and the like, whether received as a payment or credit against future liabilities, relating specifically to [Name] and relating to any period ending on, prior to or after the Effective Time;
(k) the rights of Transferor in, to and under all contracts, agreements, arrangements, permits or licenses of any nature and related to the Transferred Assets, which are not expressly excluded pursuant to Section 2.02 and of which the obligations of Transferor thereunder are not expressly excluded by Transferee pursuant to Section 2.04; and

(l) any and all unit-specific reactive power tariffs.

Section 2.02. Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.01 or elsewhere in this Agreement, nothing in this Agreement shall constitute or be construed as conferring on Transferee, and Transferee is not acquiring, any right, title or interest in and to (x) any properties, assets, business, operation, or division of Transferor or any of its Affiliates (other than Transferee) not expressly set forth in Section 2.01, or (y) the following specific assets of Transferor (or as to which Transferor has an undivided ownership interest therein, as tenant in common) that are associated with the Transferred Assets, but which are specifically excluded from the transfer contemplated hereunder. Such assets, properties and rights are excluded from the Transferred Assets and shall remain the property of Transferor after the Closing (collectively, the “Excluded Assets”):

(a) the Transferor’s Real Property, other than the portion thereof comprised of the Real Property and to be conveyed by the Deed (the “Transferor’s Retained Real Property”);

(b) all cash, cash equivalents, bank deposits, accounts and notes receivables (trade or otherwise), prepaid expenses relating to the Transferred Assets and any receivables related to income Taxes attributable to the income of Transferor;

(c) all minute books, stock transfer books, corporate seals and other corporate records;

(d) [reserved];

(e) any insurance policies;

(f) certificates of deposit, shares of stock, securities, bonds, debentures, evidences of indebtedness, and interests in joint ventures, partnerships, limited liability companies and other entities, including, without limitation any part of Transferor’s interest in the Ohio Valley Electric Corporation;

(g) except for those agreements identified in Section 2.01(l) above, all tariffs, agreements and arrangements to which Transferor is a party for the purchase or sale of electric capacity and/or energy or for the purchase or sale of transmission or ancillary services involving the Transferred Assets or otherwise;
all personnel records together with all deferred compensation, profit-sharing, retirement and pension plans and all bonus, fringe benefit and other employee benefit plans maintained or with respect to which contributions are made by Transferor or any of its Affiliates (other than Transferee) in respect of the current employees of Transferor or any of its Affiliates (other than Transferee) providing services for or otherwise associated with the Transferred Assets;

except in respect of Assumed Liabilities, the rights of Transferor in and to any causes of action against third parties relating to the Transferred Assets or any part thereof, including any claim for refunds, prepayments, offsets, recoupment, insurance proceeds, condemnation awards, judgments and the like, whether received as a payment or credit against future liabilities, relating specifically to [Name] and relating to any period ending prior to the Effective Time;

all other assets and properties owned by Transferor or any of its Affiliates (other than Transferee) that do not constitute, are not used in connection with or are not ancillary to the ownership or operation of [Name];

all transmission facilities included in Transferor’s FERC-jurisdictional rate base;

the rights of Transferor under this Agreement and the Ancillary Agreements; and

any Emissions Allowances and fuel contracts.

Section 2.03. Assumed Liabilities. On the Closing Date, Transferee shall execute and deliver the Assumption Agreement, pursuant to which, among other things, Transferee shall assume and agree to perform and discharge, without recourse to Transferor, all Liabilities related to the Transferred Assets, including the following Liabilities of Transferor, in accordance with the respective terms and subject to the respective conditions thereof (collectively, the “Assumed Liabilities”):

all Liabilities of Transferor under the Transferred Contracts, Transferred Permits and Transferred Intellectual Property, in each case in accordance with the terms thereof, except to the extent that such Liabilities, but for a breach or default by Transferor, would have been paid, performed or otherwise discharged prior to the Effective Time or to the extent the same arise out of any such breach or default or out of any event which after the giving of notice would constitute a default by Transferor;

(a) all Liabilities of Transferor with respect to [Name] arising under or relating to Environmental Laws or relating to any claim in respect of Environmental Conditions or Hazardous Substances, including settlements, judgments, costs and expenses, including reasonable attorneys fees, whether based on common law or Environmental Laws (collectively, “Environmental Liabilities”), in each case accruing or
arising before, from or after the Effective Time, with respect to (i) any violation or alleged violation of Environmental Laws with respect to the ownership, lease, maintenance or operation of any of the Transferred Assets, including any fines or penalties that arise in connection with the ownership, lease, maintenance or operation of the Transferred Assets, and the costs associated with correcting any such violations; (ii) loss of life, injury to persons or property or damage to natural resources caused (or allegedly caused) by any Environmental Condition or the presence or Release of Hazardous Substances at, on, in, under, adjacent to or migrating from the Transferred Assets, including any Environmental Condition or Hazardous Substances contained in building materials at or adjacent to the Transferred Assets or in the soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or near the Transferred Assets; (iii) any Remediation of any Environmental Condition or Hazardous Substances that are present or have been Released at, on, in, under, adjacent to or migrating from, the Transferred Assets or in the soil, surface water, sediments, groundwater, landfill cells or in other environmental media at or adjacent to the Transferred Assets; (iv) any bodily injury, loss of life, property damage, or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, of Hazardous Substances generated in connection with the ownership, lease, maintenance or operation of the Transferred Assets; (v) any Remediation of any Environmental Condition or Release of Hazardous Substances arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, of Hazardous Substances generated in connection with the ownership, lease, maintenance or operation of the Transferred Assets; and (vi) any obligation to repower, replace, decommission, deactivate, dismantle, demolish or close the Transferred Assets or any portion thereof, or any surface impoundments or other waste or effluent handling or storage units on owned or leased adjacent properties used in connection with the operation of the Transferred Assets;

(c) all liabilities or obligations of Transferor to third parties for personal injury or tort, or similar causes of action arising solely out of the ownership, lease, maintenance or operation of the Transferred Assets (collectively, “Tort Liabilities”), accruing or arising before, from or after the Effective Time;

(d) subject to Section 3.03, any payment obligations of Transferor or its Affiliates for goods delivered or services rendered, all as related to any of the Transferred Assets, regardless of when delivered or rendered;

(e) any Tax that may be imposed by any federal, state or local government on Transferor with respect to the ownership, sale, operation or use of the Transferred Assets on or after the Effective Time;

(f) any fines and penalties imposed by any Governmental Authority resulting from any act or omission by Transferor and related to the Transferred Assets; and
(g) all liabilities or obligations of Transferor with respect to the Assumed Payables and the Short-Term Debt.

Section 2.04. Excluded Liabilities. Notwithstanding the foregoing provisions of Section 2.03, Transferee shall not assume by virtue of this Agreement, the Assumption Agreement or any other Ancillary Agreement, or the transactions contemplated hereby or thereby, or otherwise, and shall have no liability for any of the following Liabilities or any Liability of Transferor that is not related to the Transferred Assets (the “Excluded Liabilities”):

(a) any Liabilities of Transferor in respect of any Excluded Assets or other assets of Transferor that are not Transferred Assets;

(b) except as set forth in Section 2.03(e), any Liabilities in respect of Transferor’s Taxes, which Liabilities include, without limitation, any reserves established in connection with litigation in Ohio relating to property qualifying for a thermal efficiency exemption;

(c) any Liabilities of Transferor (i) arising from the breach or default by Transferor of any Transferred Contract, Transferred Permit or Transferred Intellectual Property not related to the Transferred Assets or (ii) in respect of any other contract, agreement, personal property lease, permit, license or other arrangement or instrument entered into by Transferor, unless related to any of the Transferred Assets;

(d) subject to Section 3.03 and unless related to any of the Transferred Assets, any payment obligations of Transferor or its Affiliates (other than Transferee) for goods delivered or services regardless of when rendered;

(e) except as set forth on Schedule 2.04(e), any fines and penalties imposed by any Governmental Authority resulting from any act or omission by Transferor and not related to the Transferred Assets;

(f) any income Taxes attributable to income received by Transferor;

(g) any Liability of Transferor arising as a result of its execution and delivery of this Agreement or any Ancillary Agreement, the performance of its obligations hereunder or thereunder, or the consummation by Transferor of the transactions contemplated hereby or thereby;

(h) any Liability of Transferor based on Transferor’s acts or omissions on or after the Effective Time;

(i) all liabilities or obligations of Transferor with respect to the bond obligations set forth on Schedule 2.04(i); and
(j) except for the Environmental Liabilities or the Tort Liabilities or as set forth on Schedule 2.04(j), any and all environmental liabilities and tort liabilities of Transferor.

ARTICLE III

ASSET TRANSFER; CLOSING

Section 3.01. Asset Transfer. Transferor shall transfer to Transferee (a) the Transferred Assets except CWIP at Net Book Value as of the Effective Time, which is equal to [$__________] and (b) all CWIP at its Net Book Value as of the Effective Time, which is equal to [$__________]. The Net Book Value of the Transferred Assets, together with the Net Book Value of all CWIP, is hereinafter referred to as the “Transfer Consideration”. Transferee shall assume the Assumed Liabilities [and issue equity of Transferee to Transferor] in such amount as Transferor and Transferee shall mutually agree.

Section 3.02. Inventory; Transaction Costs. At Closing, Transferor shall also transfer its Closing Inventory to Transferee at Net Book Value. Transferee shall assume an additional amount of short term debt owed by the Transferor equal to this Closing Inventory Net Book Value. This aggregate additional amount of short term debt is hereinafter referred to as the “Additional Transfer Consideration”. Each Party shall bear its own costs in connection with the transactions contemplated by this Agreement.

Section 3.03. Proration. (a) Transferee and Transferor agree that all of the items normally prorated, including those listed below, relating to the business and operation of the Transferred Assets shall be prorated as of the Effective Time, with Transferor liable to the extent such items relate to any time period through the Effective Time, and Transferee liable to the extent such items relate to periods subsequent to the Effective Time:

(i) personal property, real estate, occupancy and any other Taxes, assessments and other charges, if any, on or with respect to the business and operation of the Transferred Assets. Provided, however, that the Parties shall not prorate any Taxes, assessments or charges relating to the Transferred Assets that are to be assumed by Transferee pursuant to Section 2.03(e);

(ii) rent, Taxes and other items payable by or to Transferor under any of the Transferor Agreements to be assigned to and assumed by the Transferee hereunder;

(iii) any permit, license or registration fees with respect to any Environmental Permit or other Permit; and
(iv) sewer rents and charges for water, telephone, electricity and other utilities.

(b) In connection with such proration, in the event that actual figures are not available at the Closing Date, the proration shall be based upon the actual amount of such Taxes or fees for the preceding year (or appropriate period) for which actual Taxes or fees are available and such Taxes or fees shall be reprorated upon request of either the Transferor or the Transferee made within 60 days of the date that the actual amounts become available. Transferor and Transferee agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.03.

Section 3.04. Closing. The transfer, assignment, conveyance and delivery of the Transferred Assets, and the consummation of the other transactions contemplated by this Agreement shall take place at a closing (the “Closing”), to be held at the offices of Duke Energy Ohio, LLC, 139 East Fourth Street, Cincinnati Ohio 45201 at 10:00 a.m. eastern standard time (or another mutually acceptable time and location), on the date of execution and delivery of this Agreement by each of the Parties (or on such other date as may be mutually agreed upon by the Parties) (the “Closing Date”). The Closing shall be effective for all purposes as of [January 1, 2009] (the “Effective Time”).

Section 3.05. Closing Deliveries. (a) At the Closing, Transferor will deliver, or cause to be delivered, to Transferee:

(i) the Deed, duly executed and acknowledged by Transferor and in recordable form;

(ii) the Bill of Sale, duly executed by Transferor;

(iii) the Assumption Agreement, duly executed by Transferor

(iv) copies of all Transferor's Required Consents obtained by Transferor; and

(v) such other documents as are contemplated by this Agreement or as the Transferee may reasonably request to carry out the purposes of this Agreement.

(b) At the Closing, Transferee will provide the Transfer Consideration as well as the Additional Transfer Consideration. In addition, Transferee will deliver, or cause to be delivered, to Transferor:

(i) the Assumption Agreement, duly executed by Transferee;
(ii) copies of all Transferee's Required Consents obtained by Transferee; and

(iii) such other documents as are contemplated by this Agreement or as the Transferor may reasonably request to carry out the purposes of this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.01. Representations and Warranties of Transferor. Transferor represents and warrants to Transferee, except as otherwise set forth in Transferor's most recent report filed with the Securities and Exchange Commission on Form 10K and any other current or periodic reports filed thereafter and prior to the date hereof, as follows:

(a) Organization and Good Standing; Qualification. Transferor is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Ohio. Transferor has all requisite power and authority to own, lease or operate the Transferred Assets and to carry on its business as it is now being conducted. Transferor is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the character or location of the properties owned or used by it or the nature of the business conducted by it makes such qualification or license necessary, except for jurisdictions in which the failure to be so qualified, licensed or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Authority and Enforceability. Transferor has full power and authority to execute and deliver, and carry out its obligations under, this Agreement and each Ancillary Agreement to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Transferor of this Agreement and each Ancillary Agreement to which it is a party, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary action on the part of Transferor. Assuming the due authorization, execution and delivery of this Agreement and each Ancillary Agreement to which it is a party by Transferee, and subject to the receipt of Transferor's Required Consents, each of this Agreement and each Ancillary Agreement constitutes a legal, valid and binding obligation of Transferor, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency and other similar laws affecting the rights and remedies of creditors generally and by general principles of equity.

(c) No Violation; Consents and Approvals. (i) Subject to obtaining Transferor’s Required Consents, neither the execution, delivery and performance by Transferor of this Agreement and each Ancillary Agreement to which it is a party, nor the
consummation by Transferor of the transactions contemplated hereby and thereby, will (A) conflict with or result in any breach of any provision of the Organizational Documents of Transferor; (B) result in a default (or give rise to any right of termination, cancellation or acceleration), or require a consent, under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Transferor is a party or by which it or any of the Transferred Assets may be bound, except for any such defaults or consents (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; or (C) constitute a violation of any law, regulation, order, judgment or decree applicable to Transferor, except for any such violations as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) Except as set forth in Section I of Schedule 4.01(c)(ii) (listing each of Transferor's Required Governmental Consents) or Section II thereof (listing each of Transferor's Required Third-Party Consents), no consent or approval of, filing with, or notice to, any Governmental Authority or other Person is necessary for the execution, delivery and performance of this Agreement by Transferor or of any Ancillary Agreement to which Transferor is a party, or the consummation by Transferor of the transactions contemplated hereby and thereby, other than such consents, approvals, filings or notices which, if not obtained or made, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) Insurance. All material policies of fire, liability, workers' compensation and other forms of insurance owned or held by, or on behalf of, Transferor and insuring the Transferred Assets are in full force and effect, all premiums with respect thereto covering all periods up to and including the date hereof have been paid (other than retroactive premiums which may be payable with respect to comprehensive general liability and workers' compensation insurance policies), and no notice of cancellation or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation.

(e) Real Property. Schedule 4.01(e) sets forth a description of the real property owned and to be transferred as contemplated herein (whether on a tenancy in common basis or otherwise), by Transferor and associated with [Name] (the “Real Property”), including a description of all land, and all encumbrances, easements or rights of way of record (or, if not of record, of which Transferor has Knowledge) granted on or appurtenant to or otherwise affecting such Real Property and specifically excluding the Transferor’s Retained Real Property.

(f) Conveyance of Real Property. To the knowledge of Transferor, no state, municipal, or other governmental approval regarding the division, platting, or mapping of real estate is required as a prerequisite to the conveyance by Transferor to Transferee (or as a prerequisite to the recording of any conveyance document) of any Real Property pursuant to the terms hereof.
(g) **Improvements.** Neither Transferor nor any Affiliate thereof has received any written notices from any Governmental Authority stating or alleging that any Improvements constituting part of the Transferred Assets have not been constructed in compliance with applicable Laws.

(h) **Title; Condition of Assets.**

(i) Subject to Permitted Encumbrances, Transferor is the holder of record title to the Real Property and has good and valid title to the other Transferred Assets that it purports to own, free and clear of all Encumbrances.

(ii) The tangible assets (real and personal) at, related to, or used in connection with [Name], taken as a whole, (A) are in good operating and usable condition and repair, free from any defects (except for ordinary wear and tear, in light of their respective ages and historical usages, and except for such defects as do not materially interfere with the use thereof in the conduct of the normal operation and maintenance of the Transferred Assets taken as a whole) and (B) have been maintained consistent with Good Utility Practice.

(i) **Environmental Matters.**

(i) Transferor holds, and is in compliance with, all permits, certificates, certifications, licenses and other authorizations issued by Governmental Authorities under Environmental Laws (collectively, “Environmental Permits”) that are required for Transferor to conduct the business and operations of the Transferred Assets, and Transferor is otherwise in compliance with all applicable Environmental Laws with respect to the business and operations of the Transferred Assets, except for any such failures to hold or comply with required Environmental Permits, or such failures to be in compliance with applicable Environmental Laws, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(ii) Transferor has not received any written request for information, or been notified of any violation, or that it is a potentially responsible party, under CERCLA or any other Environmental Law for contamination or air emissions at the station at which [Name] is located or the Real Property, except for any such requests or notices that would result in liabilities under such laws as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and there are no claims, actions, proceedings or investigations pending or, to the Knowledge of Transferor, threatened against Transferor before any Governmental Authority or body acting in an adjudicative capacity relating in any way to any Environmental Laws or against Transferor or Parent concerning contamination or air emissions at the station at which [Name] is located or the Real Property; and

(iii) there are no outstanding judgments, decrees or judicial orders relating to the Transferred Assets regarding compliance with any Environmental Law or to the investigation or cleanup of Hazardous Substances under any Environmental Law relating to the Purchase Assets, except for such outstanding judgments, decrees or judicial orders...
as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(iv) Section I of Schedule 4.01(m) lists all Environmental Permits.

The representations and warranties made in this Section 4.01(i) are the exclusive representations and warranties of Transferor relating to environmental matters.

(j) Condemnation. There are no pending or, to the Knowledge of Transferor, threatened proceedings or governmental actions to condemn or take by power of eminent domain all or any part of the Transferred Assets.

(k) Contracts and Leases. (i) Schedule 4.01(k) lists all written contracts, agreements, licenses (other than Environmental Permits, Permits or Intellectual Property) or personal property leases of Transferor that are material to the business or operations of the Transferred Assets, other than any such agreements, licenses, or personal property leases that are expected to expire or terminate prior to the Effective Time.

(ii) Except as disclosed in Schedule 4.01(k), each Transferred Contract (A) constitutes a legal, valid and binding obligation of Transferor and, to Transferor's Knowledge, constitutes a valid and binding obligation of the other parties thereto, (B) is in full force and effect and Transferor has not delivered or received any written notice of termination thereunder, and (C) may be transferred to Transferee pursuant to this Agreement without the consent of the other parties thereto and will continue in full force and effect thereafter, in each case without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder.

(iii) Except as set forth in Schedule 4.01(k), there is not under any Transferred Contract any default or event which, with notice or lapse of time or both, (A) would constitute a default by Transferor or, to Transferor’s Knowledge, any other party thereto, (B) would constitute a default by Transferor or, to Transferor’s Knowledge, any other party thereto which would give rise to an automatic termination, or the right of discretionary termination, thereof, or (C) would cause the acceleration of any of Transferor’s obligations thereunder or result in the creation of any Encumbrance (other than any Permitted Encumbrance) on any of the Transferred Assets. There are no claims, actions, proceedings or investigations pending or, to the Knowledge of Transferor, threatened against Transferor or any other party to any Transferred Contract before any Governmental Authority or body acting in an adjudicative capacity relating in any way to any Transferred Contract or the subject matter thereof. Transferor has no Knowledge of any defense, offset or counterclaim arising under any Transferred Contract.

(l) Legal Proceedings. Except as set forth on Schedule 4.01(l) there are no actions or proceedings pending or, to the Knowledge of Transferor, threatened against Transferor before any court, arbitrator or Governmental Authority, which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.
Transferor is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any court, arbitrator or Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(m) **Permits.** (i) Transferor has all permits, licenses, franchises and other governmental authorizations, consents and approvals (other than Environmental Permits, which are addressed in Section 4.01(i)) (collectively, “Permits”) necessary to own and operate the Transferred Assets, except where any failures to have such Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Transferor has not received any written notification that Transferor is in violation, nor does Transferor have Knowledge of any violations, of any such Permits, or any Law or judgment of any Government Authority applicable to Transferor with respect to the Transferred Assets, except for violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) Section II of Schedule 4.01(m) lists all material Permits (other than Environmental Permits).

(n) **Taxes.** To the best of Transferor’s knowledge and belief, Transferor has filed all Tax Returns that are required to be filed by it with respect to any Tax relating to the Transferred Assets, and Transferor has paid all Taxes that have become due as indicated thereon, except where such Tax is being contested in good faith by appropriate proceedings, or where any failures to so file or pay would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There are no Encumbrances for Taxes on the Transferred Assets that are not Permitted Encumbrances.

(o) **Intellectual Property.** Transferor has such ownership of or such rights by license or other agreement to use all Intellectual Property necessary to permit Transferor to conduct its business with respect to the Transferred Assets as currently conducted, except where any failures to have such ownership, license or right to use would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Transferor is not, nor has Transferor received any notice that Transferor is, in default (or with the giving of notice or lapse of time or both, would be in default) under any contract to use such Intellectual Property, and there are no material restrictions on the transfer of any material contract, or any interest therein, held by Transferor in respect of such Intellectual Property. Transferor has not received notice that it is infringing any Intellectual Property of any other Person in connection with the operation or business of the Transferred Assets.

(p) **Compliance with Laws.** Transferor is in compliance with all applicable Laws with respect to the ownership or operation of the Transferred Assets, except where any such failures to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
(q) **Finder’s Fees.** Transferor represents and warrants to Transferee that no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by Transferor.

(q) **Limitation of Representations and Warranties.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND IN ANY ANCILLARY AGREEMENT, TRANSFEROR IS NOT MAKING, AND HEREBY DISCLAIMS, ANY OTHER REPRESENTATIONS AND WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING TRANSFEROR, [NAME] OR THE TRANSFERRED ASSETS OR ANY PART THEREOF.

Section 4.02. **Representations and Warranties of Transferee.** Transferee represents and warrants to Transferor as follows:

(a) **Organization and Good Standing.** Transferee is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Ohio and has all requisite power and authority to own, lease or operate its properties and to carry on its business as it is now being conducted.

(b) **Authority and Enforceability.** Transferee has full power and authority to execute and deliver and carry out its obligations under this Agreement and each Ancillary Agreement to which it is a party, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Transferee of this Agreement and each such Ancillary Agreement, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary action by Transferee. Assuming the due authorization, execution and delivery of this Agreement and each such Ancillary Agreement by the other party or parties thereto, and subject to the receipt of Transferee's Required Consents, each of this Agreement and each such Ancillary Agreement constitutes a legal, valid and binding obligation of Transferee, enforceable against Transferee in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency and other similar laws affecting the rights and remedies of creditors generally and by general principles of equity.

(c) **No Violation; Consents and Approvals.** (i) Subject to obtaining Transferee's Required Consents, neither the execution, delivery and performance by Transferee of this Agreement and each Ancillary Agreement to which Transferee is a party, nor the consummation by Transferee of the transactions contemplated hereby and thereby, will (A) conflict with or result in any breach of any provision of the Organizational Documents of Transferee; (B) result in a default (or give rise to any right of termination, cancellation or acceleration), or require a consent, under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Transferee is a party or by which any of their...
respective material properties or assets may be bound, except for any such defaults or consents (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements; or (C) constitute a violation of any law, regulation, order, judgment or decree applicable to Transferee, except for any such violations as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements.

(ii) Except as set forth in Section I of Schedule 4.02(c)(ii) (listing each of Transferee’s Required Governmental Consents) or Section II thereof (listing each of Transferee’s Required Third-Party Consents), no consent or approval of, filing with, or notice to, any Governmental Authority or other Person is necessary for the execution and delivery of this Agreement or any Ancillary Agreement by Transferee, or the consummation by Transferee of the transactions contemplated hereby and thereby, except for any such consents, approvals, filings or notices which, if not obtained or made, would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements.

(d) Legal Proceedings. There are no actions or proceedings pending or, to the Knowledge of Transferee, threatened against Transferee before any court, arbitrator or Governmental Authority, which, individually or in the aggregate, would reasonably be expected to have a material adverse effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements. Transferee is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any court, arbitrator or Governmental Authority which, individually or in the aggregate, would reasonably be expected to have a material adverse effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements.

(e) Finder’s Fees. Transferee represents and warrants to Transferor that no broker, finder or other Person is entitled to any brokerage fees, commissions or finder’s fees in connection with the transactions contemplated hereby by reason of any action taken by Transferee.

ARTICLE V
COVENANTS

Section 5.01. Books and Records. For a period of seven years after the Closing Date (or such other date as the Parties may mutually determine), each Party and its Representatives shall have reasonable access to all books and records of the Transferred
Assets, to the extent that such access may reasonably be required by such Party in connection with the Assumed Liabilities or the Excluded Liabilities, or other matters affected by the operation of the Transferred Assets. Such access shall be afforded by the Party in possession of any such books and records upon receipt of reasonable advance notice and during normal business hours. The Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it or the other Party with respect to such access pursuant to this Section 5.01. If the Party in possession of such books and records desires to dispose of any such books and records upon or prior to the expiration of such seven-year period, such Party shall, prior to such disposition, give the other Party a reasonable opportunity, at such other Party’s expense, to segregate and remove such books and records as such other Party may select.

Section 5.02. [RESERVED]

Section 5.03. Tax Matters. All transfer, use, stamp, sales and similar Taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be the sole responsibility of Transferor and, to the extent paid by Transferee, Transferor shall promptly reimburse Transferee upon request. If any action or omission of Transferee causes the Transferor, Transferee or any of the Transferred Assets to be in breach of any provision of a Tax abatement agreement, then Transferee shall be solely liable for any Taxes, penalties and interest incurred and payable as a result of such breach, whether attributable to periods before or after the Effective Time.

Section 5.04. Further Assurances. (a) Subject to the terms and conditions of this Agreement, each of Transferor, on the one hand, and Transferee, on the other hand, shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transfer of the Transferred Assets pursuant to this Agreement and the assumption of the Assumed Liabilities, including using commercially reasonable efforts with a view to obtaining all necessary consents, approvals and authorizations of, and making all required notices or filings with, third parties required to be obtained or made in order to consummate the transactions hereunder, including the transfer of the Transferred Permits to Transferee. Neither Transferor, on the one hand, nor Transferee, on the other hand, shall, without prior written consent of the other, take or fail to take any action which might reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement.

(b) In the event that any portion of the Transferred Assets shall not have been conveyed to Transferee at the Closing, Transferor shall, subject to paragraphs (c) and (d) immediately below, convey such asset to Transferee as promptly as practicable after the Closing.

(c) To the extent, if any, that Transferor’s rights under any Transferred Contract may not be assigned without the consent of any other party thereto, which consent has not been obtained by the Closing Date, this Agreement shall not constitute an
agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful. Transferor and Transferee agree that if any consent to an assignment of any Transferred Contract has not been obtained at the Closing Date, or if any attempted assignment would be ineffective or would impair Transferee’s rights and obligations under the Transferred Contract in question, so that Transferee would not in effect acquire the benefit of all such rights and obligations, Transferor, at its option and to the maximum extent permitted by law and such Transferred Contract, shall, after the Closing Date, (i) appoint Transferee to be Transferor's agent with respect to such Transferred Contract or (ii) to the maximum extent permitted by law and such Transferred Contract, enter into such reasonable arrangements with Transferee or take such other commercially reasonable actions to provide Transferee with the same or substantially similar rights and obligations of such Transferred Contract. From and after the Closing Date, Transferor and Transferee shall cooperate and use commercially reasonable efforts to obtain an assignment to Transferee of any such Transferred Contract.

(d) To the extent that Transferor’s rights under any warranty or guaranty described in Section 2.01(f) may not be assigned without the consent of another Person, which consent has not been obtained by the Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof or be unlawful. The Parties agree that if any consent to an assignment of any such warranty or guaranty has not been obtained or if any attempted assignment would be ineffective or would impair Transferee's rights and obligations under the warranty or guaranty in question, so that Transferee would not in effect acquire the benefit of all such rights and obligations, Transferor shall use commercially reasonable efforts to the extent permitted by law and such warranty or guaranty, to enforce such warranty or guaranty for the benefit of Transferee to the maximum extent possible so as to provide Transferee with the benefits and obligations of such warranty or guaranty. Notwithstanding the foregoing, Transferor shall not be obligated to bring or file suit against any third party, provided that if Transferor determines not to bring or file suit after being requested by Transferee to do so, Transferor shall assign, to the extent permitted by law or any applicable agreement, its rights in respect of the claims so that Transferee may bring or file such suit.

Section 5.05. Survival. The representations and warranties of the Parties contained herein shall not survive the Closing and thereafter shall be of no further force and effect.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.01 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (i) on the day when delivered personally or
by e-mail (with confirmation) or facsimile transmission (with confirmation), (ii) on the
next business day when delivered to a nationally recognized overnight delivery service,
or (iii) 5 business days after deposited as registered or certified mail (return receipt
requested), in each case, postage prepaid, addressed to the recipient Party at its address
set forth below (or to such other addresses and e-mail and facsimile numbers for a Party
as shall be specified by like notice; provided, however, that any notice of a change of
address or e-mail or facsimile number shall be effective only upon receipt thereof):

If to Transferor, to:

Duke Energy Ohio, LLC
139 East Fourth Street
Cincinnati, OH 45202
Attn: President
Facsimile No.: [___________]

If to Transferee, to:

{Name}, LLC
139 East Fourth Street
Cincinnati, OH 45202
Attn: President
Facsimile No: [__________]

Section 6.02. Waiver. The rights and remedies of the Parties are
cumulative and not alternative. Neither the failure nor any delay by any Party in
exercising any right, power, or privilege under this Agreement or the documents referred
to in this Agreement will operate as a waiver of such right, power, or privilege, and no
single or partial exercise of any such right, power, or privilege will preclude any other or
further exercise of such right, power, or privilege or the exercise of any other right,
power, or privilege. To the maximum extent permitted by applicable Law, (a) no claim
or right arising out of this Agreement or the documents referred to in this Agreement can
be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim
or right unless in writing signed by each other Party; (b) no waiver that may be given by a
Party will be applicable except in the specific instance for which it is given; and (c) no
notice to or demand on one Party will be deemed to be a waiver of any obligation of such
Party or of the right of the Party giving such notice or demand to take further action
without notice or demand as provided in this Agreement or the documents referred to in
this Agreement.

Section 6.03. Entire Agreement; Amendment etc.

(a) This Agreement and the Ancillary Agreements, including the Schedules,
Exhibits, documents, certificates and instruments referred to herein or therein, embody
the entire agreement and understanding of the Parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement supersedes all prior or contemporaneous agreements, understandings or statements or agreements between the Parties, whether written or oral, with respect to the transactions contemplated hereby. Each Party acknowledges and agrees that no employee, officer, agent or representative of the other Party has the authority to make any representations, statements or promises in addition to or in any way different than those contained in this Agreement and the Ancillary Agreements, and that it is not entering into this Agreement or the Ancillary Agreements in reliance upon any reliance upon an representation, statement or promise of the other Party except as expressly stated herein or therein.

(b) This Agreement may not be amended, supplemented, terminated or otherwise modified except by a written agreement executed by Transferor and Transferee.

(c) This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 6.04. Assignment. This Agreement and all the of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by, on the one hand, Transferor, and on the other hand, Transferee, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other Party, and any attempt to make any such assignment without such consent will be null and void. Notwithstanding the foregoing, Transferor or Transferee may assign or otherwise transfer its rights hereunder and under any Ancillary Agreement to any bank, financial institution or other lender providing financing to Transferor or Transferee, as applicable, as collateral security for such financing; provided, however, that no such assignment shall (x) impair or materially delay the consummation of the transactions contemplated hereby or (y) relieve or discharge Transferor or Transferee, as the case may be, from any of its obligations hereunder and thereunder.

Section 6.05. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the
Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 6.06. Bulk Sales Laws. Transferee hereby acknowledges that, notwithstanding anything in this Agreement to the contrary, Transferor will not comply with the provisions of the bulk sales laws of any jurisdiction in connection with the transactions contemplated by this Agreement; and Transferee hereby irrevocably waives compliance by Transferor with the provisions of the bulk sales laws of all applicable jurisdictions.

Section 6.07. Governing Law. This Agreement, the construction of this Agreement, all rights obligations between the Parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including all tort and contract claims) will be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to choice of law principles thereof.

Section 6.08. Counterparts; Facsimile Execution. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties and delivered to each other Party, it being understood that the Parties need not sign the same counterpart. This Agreement may be executed by facsimile signature(s).

Section 6.09. Schedules. The Schedules to this Agreement are intended to be and hereby are specifically made a part of this Agreement.

Section 6.10. Specific Performance. The Parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not to be performed in accordance with the terms hereof and that the Parties will be entitled to specific performance of the terms hereof in addition to any other remedies at law or in equity.

Section 6.11. Dispute Resolution. (a) If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following alternative dispute resolution (“ADR”) procedures prior to any Party pursuing other available remedies:

(i) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
(ii) If, within 30 days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either Party (the “Neutral”) to act as a mediator. If the Parties are unable to agree on the Neutral within 20 days, they shall seek assistance in such regard from the Center for Resolution of Disputes, Inc., which has an office in downtown Cincinnati (“CRD”). The Parties shall share the fees of the Neutral and all other common fees and expenses equally.

(iii) The mediation may proceed in accordance with CRD’s Model Procedure for Mediation of Business Disputes, or the Parties may establish their own procedure.

(iv) The Parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within 60 days, then, upon 7 days” written notice to the other Party, either Party may propose another form of ADR (e.g., arbitration, a mini-trial, or a summary jury trial) or may pursue other available remedies.

(b) All ADR proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for the ADR proceedings shall not be used as evidence by the other Party in any subsequent litigation; provided, however, that the underlying facts supporting such materials may be subject to discovery.

(c) Each Party fully understands its specific obligations under the ADR provisions of this Agreement. Neither Party considers such obligations to be vague or in any way unenforceable, and neither Party will contend to the contrary at any future time or in any future proceeding.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]
IN WITNESS WHEREOF, each of the Parties has caused this Asset Contribution Agreement to be executed on its behalf by its respective officer thereunto duly authorized, all as of the day and year first above written.

DUKE ENERGY OHIO, LLC

By: ____________________________
   Sandra P. Meyer
   President, Duke Energy Ohio, LLC

[______________], LLC

By: ____________________________
   President
FORM OF DEBT ASSUMPTION AGREEMENT

THIS DEBT ASSUMPTION AGREEMENT (this “Agreement”) is made and entered into as of the ___ day of ______, 200__, by and between DUKE ENERGY OHIO, LLC, a limited liability company organized and existing under the laws of the State of Ohio ("DEO"), and CINERGY POWER INVESTMENTS, LLC, a limited liability company organized and existing under the laws of the State of Ohio (“CPI”), with reference to the matters set forth below:

A. The [JURISDICTION] (the "Issuer") has previously issued and sold $________________ in aggregate principal amount of its [Description of Bonds] (the “_______ Bonds”) pursuant to a trust indenture, dated as of ____________ between the Issuer and ____________ (as trustee). The Issuer has loaned the proceeds of the sale of the ____________ Bonds to DEO pursuant to a loan agreement dated as of ____________ (the "__________ Loan Agreement") between the Issuer and DEO for use in refunding bonds previously issued to pay the cost of ________________. The ____________ Loan Agreement obligates DEO to make payments to the Issuer in such amounts and at such times as will provide for the payment of the principal and interest on the Bonds as the same become due and payable.

B. [DESCRIPTION OF ADDITIONAL BONDS, AS NEEDED]

C. DEO and CPI desire that DEO assign to CPI and that CPI assume all of DEO’s obligations under the ______________ Loan Agreement [and other loan agreements].

E. CPI is agreeable to and is expected to satisfy all liabilities hereby assumed, whether or not DEO has been relieved of such liability.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

Section 1 Representations by DEO. DEO makes the following representations:

(a) Corporate Organization and Power. DEO is a limited liability company duly authorized, validly existing and in good standing under the laws of the State of Ohio.

(b) Agreements Are Legal and Authorized. The execution and delivery by DEO of this Agreement and the compliance by DEO with all of the provisions hereof and with respect to the ______________ Loan Agreement [and other loan agreements] are within the purposes, limited liability company powers and authority of DEO and have been duly authorized by all necessary action on the part of the DEO.

(c) Governmental Consent. Neither DEO nor any of its business or properties, nor any relationship between DEO and any other person, nor any circumstances in connection with the execution, delivery and performance by DEO of this Agreement is such as to require the consent, approval or authorization of, or the filing, registration or
qualification with, any governmental authority on the part of DEO (other than any governmental approvals previously obtained).

(d) **No Defaults.** To DEO’s knowledge, no event has occurred and no condition exists with respect to DEO that would constitute an event of default under the ______________ Loan Agreement [or other loan agreements].

**Section 2 Representations by CPI.** CPI makes the following representations as the basis for the undertakings on its part herein contained:

(a) **Corporate Organization and Power.** CPI is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Ohio.

(b) **Agreements are Legal and Authorized.** The execution and delivery by CPI of this Agreement and the compliance by CPI with all of the provisions hereof and with respect to the ______________ Loan Agreement [and other loan agreements] are within the purposes, limited liability company powers and authority of CPI and have been duly authorized by all necessary action on the part of CPI.

(c) **Governmental Consent.** Neither CPI nor any of its business or properties, nor any relationship between CPI and any other person, nor any circumstances in connection with the execution, delivery and performance by CPI of this Agreement is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority on the part of CPI (other than any governmental approvals previously obtained).

**Section 3 Assumed Obligations.** Effective as of the date hereof, DEO assigns all of its rights, duties and obligations under the ______________ Loan Agreement [and other loan agreements] to CPI (collectively, the “Assumed Obligations”), including, but not limited to, the obligation to make the remaining payments due with respect to the Assumed Obligations, and CPI assumes all rights, and agrees to perform all duties and obligations of DEO with respect to the Assumed Obligations and otherwise in connection with the ______________ Bonds [and other bonds], including, but not limited to, the obligation to make the remaining payments due with respect to the Assumed Obligations. CPI acknowledges that it has agreed to, and is expected to, fully satisfy the liabilities thereby assumed, whether or not DEO has been relieved of such liability.

**Section 4 Cooperation By DEO.** DEO agrees to promptly provide to CPI copies of all notices and communications received with respect to the Assumed Obligations, and to cooperate with CPI to the extent necessary to enable CPI to perform all of the rights, duties and obligations with respect to the Assumed Obligations.

**Section 5 Indemnification by CPI.** CPI shall indemnify, defend and hold DEO harmless from and against all losses, damages and expenses (including, without limitation, reasonable attorneys’ fees) imposed upon or incurred by it as a result of any failure by CPI to perform its obligations with respect to the Assumed Obligations or otherwise under this Agreement.
Section 6  Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7  Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Agreement.

Section 8  Notices. Notice hereunder shall be given to:

Duke Energy Ohio, LLC  
139 East Fourth Street  
Cincinnati, Ohio 45202  
Attention: Treasurer

Cinergy Power Investments, LLC  
139 East Fourth Street  
Cincinnati, OH 45202  
Attention: Treasurer

Section 9  Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Ohio.
IN WITNESS WHEREOF, DEO and CPI have caused this Agreement to be executed in their respective corporate names all as of the date first written above.

DUKE ENERGY OHIO, LLC

By: ______________________________________
Name: 
Title: 

CINERGY POWER INVESTMENTS, LLC

By: ______________________________________
Name: 
Title:
Schedule A
List of Assumed Payables
Exhibit J: Facts Relied upon to Demonstrate Consistency with Public Interest

The facts relied upon to show that the Transaction is consistent with the public interest are set forth in Section III of the Application.
Exhibit K: Maps

Applicants request waiver of the requirement to provide a map as this is a purely internal corporate reorganization that will not result in any merger or new combination of jurisdictional facilities.
Exhibit L: Status of Regulatory Actions and Orders

The Indiana Utility Regulatory Commission must approve the transfer of its declination of jurisdiction over the Vermillion plant. No other regulatory approvals or actions by other agencies, state or federal, are required, though as noted in Section III.C, recently enacted Ohio legislation, which may shortly be signed into law, provides in part that “[n]o electric distribution utility shall sell or transfer any generating asset it wholly or partly owns at any time without obtaining prior [PUCO] approval.” Applicants contemplate that the following additional FERC filings will or may be made at a later date:

1. Filings under section 205 of the FPA requesting market-based rate authorization for each of the Generating Facility LLCs.

2. Possible filing under section 205 of the FPA of ancillary services agreements under which the LLCs may provide to DEO, on a back-to-back basis, the generation-based ancillary services for which DEO is responsible.

3. Filing by MISO of generator interconnection agreements for the Facilities located in MISO, and filings by PJM of generator interconnection agreements for the Facilities located in PJM.

4. Notice of succession filings for the Unit-Specific Reactive Supply Tariffs.

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46 See Amended Substitute Senate Bill No. 221, 127th Ohio General Assembly, Regular Session 2007-2008, Section 4928.17(E).
Exhibit M: No Improper Cross-Subsidization

The Applicants’ detailed showing regarding cross-subsidization is contained in Section III.D. Also included in this e-filing are zip files containing copies of the documents evidencing the material pledges and encumbrances of the utility assets of the traditional utilities in the Duke Energy family.